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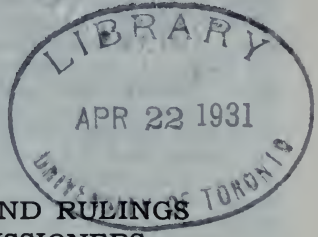
THE BOARD OF  
 RAILWAY COMMISSIONERS FOR CANADA

INDEX TO VOL. No. XX

OF

JUDGMENTS, ORDERS, REGULATIONS AND RULINGS  
 OF THE BOARD OF RAILWAY COMMISSIONERS  
 FOR CANADA

FROM APRIL 1, 1930, TO MARCH 31, 1931



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# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

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No. 1

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*Complaint of the Nichols Chemical Company, Limited, Montreal, Que., against alleged discrimination in the matter of rates on sulphuric acid from Tadanac, B.C., to Ioco, B.C.—C.P.R.*

File 37160

### JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The applicant manufactures sulphuric acid at Barnet, B.C., and ships therefrom to Ioco, where the refining plant of the Imperial Oil Company is located. This is a distance of eight miles. The sulphuric acid is used in connection with the refining of the oil at Ioco, it being explained that its function is to take the odour out of the oil. The cars used in this service load 80,000 pounds and 100,000 pounds. The rate from Barnet to Ioco is 5 cents per 100 pounds. The standard rate is 12 cents. The applicant has been located at Barnet since 1909.

No statement is submitted in evidence as to the rate which was in force when the plant was established. The present rate is paid by the Imperial Oil Company, not by the applicant. The applicant was unable to state when the 5 cents rate came in, simply stating that his product was shipped f.o.b. cars Barnet.

The plant of the Consolidated Smelters is located at Tadanac, B.C., a distance of 458 miles from Calgary and 495 miles from Ioco. The applicant states that he has to freight in the material which he uses in the manufacture of sulphuric acid. It is represented by him that the sulphuric acid manufactured at Tadanac is made from the fumes generated in smelting, thus utilizing an otherwise waste product. No definite statement was given in evidence as to when the movement from Tadanac began or how much tonnage is involved.

The complaint seems to be predicated on the assumption that the commodity rates on sulphuric acid are on the basis of 80 per cent of the 5th class rate and that the establishment of a commodity rate lower than this basis from Tadanac to Ioco, therefore, results in an unjust discrimination. The complaint, it is obvious from an examination of the rates, is based on an incorrect assumption. The rate from Barnet to Calgary is 80 per cent of the 5th class rate.

From Tadanac to Calgary the standard mileage rates apply, the 5th class rate being 87 cents, but the commodity rate of 61½ cents from Tadanac to Calgary is based on 80 per cent of the 5th class distributing class rate published from Calgary to Tadanac of 77 cents. From Barnet to Edmonton the published rate of \$1.17 is the 5th class distributing scale. From Barnet to Coutts there is a published commodity rate of 73½ cents, which is 63 per cent of the 5th class rate. From Barnet to Ioco the commodity rate of 5 cents is 41.66 per cent of the 5th class rate.

Based on the standard mileage rates, the distributing class rates and the Vancouver terminal rates, there is a greater percentage reduction in the 5-cent rate published from Barnet to Ioco than in the 50-cent rate published from Tadanac to Ioco, namely:—

	Tadanac Per cent	Ioco Per cent
Standard . . . . .	51.02	41.67
Distributing . . . . .	58.14	41.67
Terminal . . . . .	61.73	41.67

The applicant is in effect contending that there should be a minimum rate of 65 cents from Tadanac to Ioco instead of the 50-cent rate which is tariffed.

In the application as filed, stress is laid upon the cost of production. It is said that the plant of the Consolidated Smelters is “using raw material of no cost”; and, continuing, “the only competition possible is from our company having a high cost for raw materials, out of which we manufacture sulphuric acid at Barnet.”

The Board has on many occasions decided that while there was a burden on the railways to have reasonable rates, mere differences in cost of production were not the criteria of reasonableness or unreasonableness of rates. In *Canadian Portland Cement Co. vs. G.T.R., 9 Can. Ry. Cas., 209*, it was said:—

“It is not part of the obligation of the railway, under the Railway Act, to equalize costs of production through lowered rates, so that all may compete on an even keel in the same markets.”

Reference may be made to the application of the *Calgary Board of Trade rates from Winnipeg to Calgary and Edmonton, 19 Judgments and Orders, 308*, at p. 310.

The history of the rate from Barnet to Ioco is not set out in detail. It is not in accord with any general basis—it is simply a specific commodity rate. The rate from Tadanac to Ioco is also a specific commodity rate. The rate from Barnet to Ioco is 45 cents per 100 pounds less than the rate from Tadanac to Ioco.

It is now asked that the commodity rate from Tadanac to Ioco should be increased by 15 cents, thus giving a minimum of 65 cents. As there is the spread between Barnet and Tadanac rates already set out, this simply means that it is asked that 15 cents be added to the rate in order to offset the admitted disadvantages the applicant is under in respect of cost of production.

It does not appear on the record, as developed, that the applicant is being subjected to unjust discrimination.

The question of the reasonableness of the rate from Tadanac to Ioco may be considered. The evidence adduced in this respect is not at all conclusive. The following comparisons of rates and mileages are pertinent as bearing on the general level of reasonableness:—

	Miles	Rate Cents	Rate per ton per mile Cents
Tadanac to Ioco—			
Sulphuric acid . . . . .	495	50	2.02
Barnet to Coutts—			
Sulphuric acid . . . . .	826	73½	1.779
Vancouver to Edmonton—			
Kalsomine . . . . .	836	59	1.411
Creosote oil . . . . .		59	1.411
Empty barrels . . . . .		59	1.411
Liquid asphalt . . . . .		52½	1.256
Mop and broom handles . . . . .		59	1.411
Common salt . . . . .		50	1.196
Beans and peas . . . . .		56	1.339
Vancouver to Calgary—			
Creosote oil . . . . .	642	59	1.838
Liquid asphalt . . . . .		52½	1.636
Infusorial earth . . . . .		59	1.838
Feed, animal or poultry . . . . .		41½	1.293
Vancouver to Tadanac—			
Fuel oil . . . . .	506	59	2.332
Vancouver to Redcliff—			
Scrap glass . . . . .	812	48½	1.195
Vancouver to Exshaw—			
Scrap iron and steel . . . . .	585	47	1.607

The rate concerned does not appear to be unreasonable or discriminatory. The Board would not be justified in directing the increase asked for, so as to safeguard the applicant from the disadvantages of higher costs of production. March 21, 1930.

Commissioner Norris concurred.

### GENERAL ORDER No. 483

*In the matter of the protection of crossings at grade level:*

File No. 25434.5

WEDNESDAY, the 5th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Whereas, it appears that, after a train has passed a crossing protected by automatic signals or automatic gates, stops before it reaches the end of the circuit, and makes a back up movement over the crossing, it is impracticable to protect the movement by such automatic signals or automatic gates; and upon the report and recommendation of its Chief Engineer—

*The Board orders:* That the following regulations be adopted by railway companies subject to its jurisdiction in the operation of grade crossings protected by automatic signals or automatic gates, namely:—

“When a train or engine passes over any crossing protected by automatic signals or automatic gates and does not go beyond the end of the circuit (in most cases located approximately 2,000 feet from the crossing), before making a reverse movement over the same crossing, it will be necessary for trainmen to flag the crossing.”

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 44409

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.14

WEDNESDAY, the 5th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.**The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 668, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 668, approved herein, are as follows:—

	Rate in cents per 100 pounds
St. Hilaire, N.B. ....	9½
Baker Brook, N.B. ....	11
Caron Brook, N.B. ....	11

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44410

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.13

WEDNESDAY, the 5th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.**The Board orders:*

1. That the toll published in item 127 of Supplement No. 31 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 127 of Supplement No. 31 to Tariff C.R.C. No. 813, approved herein, is 21 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44412

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.2

WEDNESDAY, the 5th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 27 to Tariff C.R.C. No. E-1235, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby approved.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44418

*In the matter of the application of the Express Traffic Association of Canada for approval of Supplement "N" to the Express Classification for Canada No. 7, on file with the Board under file No. 4397.101:*

SATURDAY, the 8th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board, and reading the submission filed—

*It is ordered:* That the said Supplement "N" to the Express Classification for Canada No. 7, be, and it is hereby, approved, to become effective not earlier than April 1, 1930; the said Supplement to be published as No. 12 to Express Classification for Canada, No. 7, C.R.C. No. E.T. 986.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44428

*In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of a by-law passed February 19, 1930, authorizing O. R. Bromley, Traffic Manager, in respect of freight traffic; L. W. Landman, General Passenger Traffic Manager, or James W. Switzer, General Passenger Agent, in respect of passenger traffic; and Edward W. Brunck, Assistant Freight Traffic Manager, and E. F. Lauchtman, Chief of Tariff Bureau, in respect of freight traffic, from time to time to prepare and issue tariffs of the tolls to be charged in respect of the Applicant Company's railway; and also authorizing the said O. R. Bromley, Traffic Manager, to issue from time to time, on behalf of the Applicant Company, powers of attorney appointing agents other than officials of the Applicant Company to file tariffs of freight tolls, and the said L. W. Landman, General Passenger Traffic Manager, to issue from time to time, on behalf of the Applicant Company, powers of attorney appointing agents other than officials of the Applicant Company to file tariffs of passenger tolls, in the form prescribed in General Order of the Board No. 14, dated 30th July, 1908:*

Case No. 3276

SATURDAY, the 8th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

*The Board orders: That the said by-law, passed February 19, 1930, on file with the Board under Case No. 3276, be, and it is hereby, approved; and that Orders Nos. 31250, 39607, and 39922, dated respectively July 11, 1921, September 20, 1927, and November, 23, 1927, made herein, be rescinded.*

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER NO. 44441

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

MONDAY, the 10th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the tolls published in item 148-A of Supplement No. 22 to tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company, under Section 9 of The Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of Section 3 of the said Act.

2. *And the Board hereby certifies:* That the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 148-A of Supplement No. 22 to tariff C.R.C. No. E-4312, approved herein, are the first class rates or multiples thereof, in effect prior to July 1, 1927.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER NO. 44440

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

TUESDAY, the 11th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the rates published to Treadwell Mine, Ontario, and in item 40, of Supplement No. 13 to tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company, under Section 9 of The Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of Section 3 of the said Act.

2. *And the Board hereby certifies:* That the normal tolls which, but for the said Act, would have been effective in lieu of those published to Treadwell Mine, Ontario, and in item 40 of Supplement No. 13 to tariff C.R.C. No. E-4322, approved herein, are as follows:—

*To Treadwell Mine, Ontario,* the rates in effect to Chelmsford, Ontario, prior to July 1, 1927.

*For Item 40,* 10 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER NO. 44442

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 11th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under Section 3 of The Maritime Freight Rates Act, be, and they are hereby, approved as follows, namely:—

Supplement 7 to tariff C.R.C. No. E-1236  
Supplement 9 to tariff C.R.C. No. E-1241  
Supplement 17 to tariff C.R.C. No. E-1243

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER NO. 44449

*In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of Supplement No. 1 to Canadian Freight Classification No. 18, on file with the Board under file No. 33365.85.4.*

THURSDAY, the 13th day of March, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

Whereas notice has been given by the Canadian Freight Association in *The Canada Gazette*, as required by Section 322 of the Railway Act, and copies of the said supplement furnished to the parties enumerated in the General Orders

of the Board Numbers 271, 348, 353, 469 and 471, with the request that their objections, if any, be filed with the Board within thirty days; and upon no objections having been filed with the Board, and the report and recommendation of its Chief Traffic Officer—

*The Board orders:* That the said Supplement No. 1 to the Canadian Freight Classification be, and it is hereby, approved, subject to the following changes and additions, namely:—

To item 19, page 4, also item 1, page 7, of said Supplement covering milk, powdered or flaked, there shall be added a shipping condition for double bags at second class L.C.L. and fifth class C.L.

That the description "Woodenware or Indurated Ware" as shown in item 39, page 284, of the Classification, and on the following page; also items 43 and 44, page 285; item 12, page 169; item 4, page 152, be changed to read "Woodenware or Indurated Fibreware."

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 44450

*In the matter of the application of the Canadian National Railways for approval of various forms of tickets containing clauses limiting liability.*

File No. 1115

FRIDAY, the 14th day of March, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

The said clauses limiting liability having been examined and found to be reasonable, and upon the report and recommendation of its Assistant Chief Traffic Officer,—

*The Board orders:* That the clauses limiting liability appearing on the following ticket forms of the Canadian National Railways be, and they are hereby, approved

Form 481.—Automobile ticket between Borden, P.E.I., and Cape Tormentine, N.B.

Form 327.—Special privilege ticket between Mulgrave and Point Tupper, N.S.

Form M.T. 10.—Circus scrip ticket.

Form 204.—Banana messenger's ticket.

And the Board further orders that the following clause to be printed on interline tickets be, and the same is hereby, approved:—

*"Responsibility.*—In selling this ticket and checking baggage hereon, the selling carrier acts only as agent and is not responsible beyond its own line, except as such responsibility may be imposed by law with respect to baggage."

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44460

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

FRIDAY, the 14th day of March, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 7 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 7 to Tariff C.R.C. No. 811, approved herein, are as follows:—

Halifax, N.S., to Truro, N.S., 11½ cents per hundred pounds.

Local mileage rates, Column E rates, as published in Dominion Atlantic Tariff C.R.C. No. 733.

S. J. McLEAN,

*Assistant Chief Commissioner.*

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ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
BOARD OF RAILWAY COMMISSIONERS, FOR THE  
MONTH OF JANUARY, 1930

Railway accidents .....	177, involving	17 killed and	210 injured
Railway accidents at highway crossings.....	23, involving	6 killed and	33 injured
	200	23	243
		Killed	Injured
Passengers.. . . . .		—	43
Employees.. . . . .		7	153
Others.. . . . .		16	47
		23	243

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF NOVA SCOTIA

Accidents

- 1 Automobile—Ran into side of train; licence N.S. 29-555.
- 1 Automobile—Licence N.S. 32-384.

PROVINCE OF QUEBEC

- 2 Automobile—Carelessness of driver; licences, Que. H7524; Que. F.10253.
- 1 Automobile—Attempted to beat train; Que. T-1331.
- 1 Automobile—Auto crashed through gates in lowered position and stalled on crossing; Que. F.5102.
- 1 Automobile—Failed to stop at crossing; Que. A-249.
- 1 Pedestrian—Tried to cross tracks in front of train.

PROVINCE OF ONTARIO

- 4 Automobile—Ran into side of train; licences, Ont. MK-768; Ont. 476-445; Ont. 189-423; Ont. 179-903.
- 2 Automobile—Carelessness of driver; Ontario licences, 293-679; 297-639.
- 1 Automobile—Track motor failed to stop for crossing; Ont. licence 290-676.
- 1 Automobile—Excessive speed; Ontario licence 224-982.
- 1 Automobile—Ontario licence 275-509.

PROVINCE OF MANITOBA

- 1 Automobile—Carelessness of driver; Man. licence 82-732.

PROVINCE OF SASKATCHEWAN

- 1 Sleigh—Carelessness of driver.

PROVINCE OF ALBERTA

- 1 Automobile—Carelessness of driver; Alta. licence 55-601.
- 1 Automobile—Excessive speed; Alta. licence L-5.
- 1 Sleigh.

PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—Carelessness of driver; B.C. licence 77-488.

Of the 23 accidents at highway crossings, 3 occurred at protected crossings and 20 at unprotected crossings. Eleven of the accidents occurred during day-light hours and 12 during the night.

OTTAWA, March 22, 1930.

APR 17 1930  
UNIVERSITY OF TORONTO

# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, April 15, 1930

No. 2

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

*Application of the Confederated Freight Association, Toronto, Ontario, for a ruling of the Board as to the correct rate on past shipments, as well as the effective rate, said shipments consisting of rough stone shipped via the Canadian National Railways from Niagara Falls, Ont., to Toronto, Ont.*

File No. 31737.2

### JUDGMENT

BY THE BOARD:

By letter dated February 20, 1930, applicant submitted copies of freight bills of the Canadian National Railways covering two carloads of rough stone shipped over said railway from Niagara Falls to Toronto. According to these freight bills, one shipment was made from Niagara Falls on May 20, 1925, charged at a rate of 12 cents per 100 pounds; the other shipment being made on June 3, 1925, charged at a rate of 8 cents per 100 pounds. The description on the freight bills is the same in both cases, namely, "4 pieces rough stone," the actual weights of the shipments being shown as 81,400 and 57,800 pounds respectively. Applicant also refers to the shipments as "consisting each of 4 pieces of rough stone." Applicant stated: "It is our desire to obtain from the Board the correct rate on past shipments as well as the effective rate."

Subsequent submissions from the applicant, the reply of the railway company and a further submission of applicant in answer thereto have been made. Reference is made in considerable detail to certain Michigan Central Railroad tariffs, the provisions contained therein, and the applicant's contention as to the proper interpretation thereof, but it is unnecessary to deal with the various submissions made with regard thereto for the reason that said tariffs are applicable only with respect to shipments made from the Niagara Falls or St. Davids stations located on the Michigan Central Railroad and moving therefrom to stations on that line or points on the lines of participating carriers shown as parties to the tariffs. Said tariffs have no application whatever to shipments tendered the Canadian National Railways at their Niagara Falls station and moving exclusively over that company's railway from Niagara Falls to Toronto, as stated to be the case with respect to the shipments here concerned; such movements are provided for only in tariffs issued by the Canadian National Railways and governed by the provisions contained therein.

Canadian National Railways Tariff C.R.C. No. E-603, effective April 23, 1923, was in force at the time the two shipments above mentioned were made. This tariff is described on its title page in general terms as a "special and proportional mileage freight tariff on building material, carloads," but this is a very general, and not strictly accurate, description of its contents. Its specific application is given on page 4, i.e., it names a large list of specific commodities which are therein provided with mileage rates, and in this list of commodities are some not necessarily used as building material, for example, coal cinders, furnace slag, agricultural limestone, moulding sand, sewer pipe, etc. Reference is made to this general description on the face of the tariff by reason of applicant stating: "We do not admit that the stones shipped were for building purposes." The specific commodity description contained therein, applicable on the traffic here in question, reads: "Stone, rough or partly dressed," and the rate published for 77 miles (Niagara Falls-Toronto mileage) is 12 cents per 100 pounds. As worded, this item of the tariff applied, without qualification, on "rough stone," the commodity described in the freight bills, and which applicant states the shipments consisted of; in other words, the tariff applied on rough stone as described, whether used for building material or otherwise.

Tariff C.R.C. No. E-603 being still in force, there was issued effective June 3, 1925, a single sheet tariff C.R.C. No. E-932, described as a "special local freight tariff on stone, building, rough, carload minimum weight 60,000 pounds, from Queenston Quarry Company's Siding, Ont. (near Niagara Falls)," which published a rate of 8 cents per 100 pounds to Toronto. The tariff was issued to expire October 31, 1925, but the rate was extended by a similar special tariff (C.R.C. No. E-996) to expire December 31, 1925, and expired by limitation on that date. The railway company sets out that this rate was published under special conditions and the stone was for a particular building in Toronto. On the shipment made from Niagara Falls on June 3, 1925, the freight bill shows that this special commodity rate of 8 cents per 100 pounds was charged, although if applicant contends it did not consist of rough building stone, his right to the protection of the 8 cents rate is not proven. On the shipment made on May 20, 1925, the 12 cent rate published in tariff C.R.C. No. E-603 was applied.

Dealing with shipments moving during the year 1925, a declaratory order may issue that the carload rate legally in effect to Toronto via the Canadian National Railways was:

On "rough stone" from Niagara Falls, Ont., 12 cents per 100 pounds as published in Canadian National Railways tariff C.R.C. No. E-603.

On "rough building stone" from Queenston Quarry Company's Siding, Ont. (near Niagara Falls), from June 3 to December 31, 1925, inclusive, 8 cents per 100 pounds as published in Canadian National Railways Tariff C.R.C. Nos. E-932 and E-996.

Applicant also stated it desired to be advised as to the effective rate which, it is assumed, means the rate now current. The present rates are contained in Canadian National Railways Tariff C.R.C. No. E-1153 (and effective supplements thereto). This tariff provides for application of the mileage rates shown in rate column "G," page 19, on "Granite, marble, and—or stone, rough quarried or hammered or sawn, not carved, lettered, polished or traced;" the tariff also makes provision by Items 4392-A and 4402-A in Supplement No. 37, page 26, for commodity rates from Niagara Falls, Ont., to destinations named in said items on "Stone, building, dressed or partly dressed."

March 18, 1930.



## ORDER No. 44475

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, and Order of the Board No. 44410, dated March 5, 1930*

File No. 34822.13

THURSDAY, the 20th day of March, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

1. That the toll published in item 127 of Supplement 31 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 127 of Supplement No. 31 to Tariff C.R.C. No. 813, approved herein, is 20½ cents per 100 pounds.

3. And it is further ordered that Order No. 44410, dated March 5, 1930, be, and it is hereby, rescinded.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44476

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.2

THURSDAY, the 20th day of March, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

That the tolls published in Supplement No. 11 to Tariff C.R.C. E-1253, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44477

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of  
the Maritime Freight Rates Act*

File No. 34822.8

THURSDAY, the 20th day of March, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 36, filed by the Sydney and Louisburg Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 36, approved herein, are as follows: —

Miles	Rates in cents per 100 pounds.
Not over 10.. . . . .	5
Over 10 and not over 30.. . . . .	5½
Over 30 and not over 40.. . . . .	6

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44481

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of  
the Maritime Freight Rates Act.*

File No. 34822.12

TUESDAY, the 25th day of March, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

1. That the tolls published in supplement No. 10 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 10 to Tariff C.R.C. No. E-4324, approved herein, are published in Canadian Pacific Railway Tariffs C.R.C. Nos. E-3219 and E-3224.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44489

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.14

WEDNESDAY, the 26th day of March, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the toll published in Tariff C.R.C. No. 669, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Tariff C.R.C. No. 669, approved herein, is 4 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44533

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. 803, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, the Dominion Atlantic Railway proportion to be reported at 5 $\frac{3}{4}$  cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 2 to Tariff C.R.C. No. 803, approved herein, is 7 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 44534

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:* That the toll published in Supplement No. 14 to Tariff C.R.C. No. E-1259, filed by the Canadian National Railways, under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44535

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the toll published in item 127 of Supplement No. 32 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 127 of Supplement No. 32 to Tariff C.R.C. No. 813, approved herein, is 16½ cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44536

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.10

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

1. That the toll published in Supplement No. 2 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 2 to Tariff C.R.C. No. 3, approved herein, is 4 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44537

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

1. That the tolls published in item 50 of Supplement No. 8 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 50 of Supplement No. 8 to Tariff C.R.C. No. 811, approved herein, are as follows:—

From	To	Rates in cents per 100 pounds
Mantua, N.S. } Windsor, N.S. }	.....Truro, N.S. ....	24
Mantua, N.S. } Windsor, N.S. }	.....Kentville, N.S. ....	16½
Newport, N.S. } Windsor, N.S. }	.....Halifax, N.S. ....	21

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44538

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.8

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 37, filed by the Sydney and Louisburg Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 37, approved herein, are as follows:—

From Sydney, Nova Scotia, to	Rates in cents per 100 pounds
Victoria Junction, Nova Scotia . . . . .	7½
New Waterford, Nova Scotia . . . . .	8
Dominion, Nova Scotia . . . . .	8
Bridgeport, Nova Scotia . . . . .	8
Glace Bay, Nova Scotia . . . . .	8
Caledonia Junction, Nova Scotia . . . . .	8
Donkin, Nova Scotia . . . . .	9
Morien Junction, Nova Scotia . . . . .	9
Homeville, Nova Scotia . . . . .	9
Mira, Nova Scotia . . . . .	9
Catalone, Nova Scotia . . . . .	9½
Louisburg, Nova Scotia . . . . .	9½

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 44539

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the tolls published in supplements to tariffs filed by the Dominion Atlantic Railway Company, under Section 9 of the Maritime Freight Rates Act, and set out in column 1 of the schedule to this order, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of the tolls contained in the several supplements to tariffs approved hereunder, are the tolls contained in the several tariffs set out in column 2 of the said schedule.

## SCHEDULE

Column 1 C.R.C. No.	Column 2 C.R.C. No.
Supplement 3 to 302	774
Supplement 9 to 811	733
Supplement 8 to 815	745
Supplement 6 to 819	752

S. J. McLEAN,  
*Assistant Chief Commissioner.*

ORDER No. 44540

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.17

TUESDAY, the 1st day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the tolls published in tariff C.R.C. No. 36, filed by the Cumberland Railway and Coal Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 36, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Springhill, Nova Scotia .. . . . . .	7
Crowes, Nova Scotia .. . . . . .	7½
East Southampton, Nova Scotia .. . . . . .	7½
Southampton, Nova Scotia .. . . . . .	8
West Brook, Nova Scotia .. . . . . .	8
Kewville, Nova Scotia .. . . . . .	9
Lakelands, Nova Scotia .. . . . . .	9
Parrsboro, Nova Scotia .. . . . . .	9½

S. J. McLEAN,  
*Assistant Chief Commissioner.*



# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, April 26, 1930

No. 3

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

### *Dangerous practices of Motorists, Drivers of other Vehicles and of Pedestrians at Railway Crossings*

Files Nos. 45.8.1; 45.8.2; 45.8.3.

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from November 1, 1929, to March 31, 1930, show eighty-eight cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from July 1, 1929, to September 30, 1929 (additional reports), and also (Western Lines) from October 1, 1929, to December 31, 1929; and (Eastern Lines) from November 1, 1929, to January 31, 1930, show a total of one hundred and twenty-three cases.

The Toronto, Hamilton and Buffalo lines from October 1, 1929, to March 31, 1930 show a total of seven cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplors this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—



## CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1929				
Nov. 5....	5.30 p.m....	Victoria Park Ave., Toronto, Ont.	63-083.....	Ignoring stop signals.
" 6....	11.40 a.m....	Walton St., Port Hope, Ont.	416-934.....	Ignoring stop signals.
" 6....	4.15 p.m....	Ontario St., Cobourg, Ont.	C. 41-129.....	Disobeyed signal to stop when train approaching crossing. Driver laughed over it.
" 7....	21.55.....	Harrow St., Fort Rouge, Man.	10-353.....	Not using precaution when approaching crossing.
" 7....	3.48K.....	East Crossing, Hanna, Alta.	49-178.....	Crossed track in front of train; auto struck; all occupants seriously injured, one since dying.
" 10....	2.30.....	Tate Crossing, Tate, Sask.	71-306.....	Not using precaution when approaching crossing and ran into train.
" 10....	4.15 p.m....	William St., Chatham, Ont.	148-121.....	Crashed into lowered gates.
" 13....	4.15 p.m....	Main St., Crossing, Glencoe, Ont.	65-518.....	Ran into east gate on south side of crossing while gate down, breaking arm off.
" 14....	7.50 a.m....	Ninth Ave. Crossing, Iberville, Que.	F. 56.....	Driver stopped truck on crossing in order to have conversation with another man. When train approaching was given warning but did not heed same.
" 16....	9.15 p.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. H. 61477..	Disregarded signals and crossing over railway when engine switching; almost causing serious accident.
" 22....	9.15 a.m....	Public Crossing at Mile 17-5, Wabamun Subd., Edson Division, Edson, Alta.	Alta. 32-229....	Truck struck by extra 4306 West; two in charge killed.
" 26....	16.15K.....	Public Crossing just west Wayne Station, Alta.	Alta. 55-401....	Attempted to cross in front of engine.
" 30....	11.32K.....	Water St., Winnipeg, Man.	70309.....	Ran against signal displayed and almost ran into flagman.
Dec. 2....	4.30 p.m....	Devonshire Rd., Walkerville, Ont.	177-314.....	Trying to get under gates while being lowered.
" 3....	14.38.....	1st public crossing west of west switch at Kitscoty, Alta.	54-578.....	Saw train, applied brakes, but car skidded, damaging it considerably. Nobody injured.
" 3....	10.55 a.m....	Atwater Ave., Montreal, Que.	F. 2371.....	Ignored warning bell and lowered gates, striking latter.
" 5....	.....	Simcoe St., Oshawa, Ont.	215479.....	Auto ran into gate breaking same when train backing over crossing.
" 7....	10.04 p.m....	Walton St., Port Hope, Ont.	417-717.....	Ignored stop signal as train was coming.
" 12....	12.17 a.m....	Queen St., Chatham, Ont.	192-714.....	Auto crashed through lowered gates. Did not stop.
" 15....	15.45.....	Provencher Ave., Winnipeg, Man.	2789.....	Not using precaution when approaching crossing. Auto skidded onto crossing.
" 19....	9.30 a.m....	Devonshire Rd., Walkerville, Ont.	214906.....	Not stopping before proceeding over crossing.
" 24....	17.25K.....	127th St., Crossing, Calder, Edmonton, Alta.	68-585.....	Disregarded warning signals and drove onto crossing in front of approaching yard engine; car badly damaged. No injuries.
" 25....	19.42 K.....	Second crossing east of Fort Saskatchewan St., Alta.	Alta. 55-601....	Drove auto onto crossing in front of approaching train.
" 25....	1.10.....	Provencher Ave., Winnipeg, Man.	19299.....	Not using precaution when approaching crossing; going at a high rate of speed and running into side of train.
" 26....	24.30.....	95th St. Crossing, Edmonton, Alta.	Alta. 80-961....	Disregarded crossing gates, passing under them; collided with tender of engine, damaging auto. No injuries.
" 29....	8.00 p.m....	Kingston Rd. East, Cobourg, Ont.	Ont. 12255C....	Failed to stop when gates down and train approaching.

## CANADIAN NATIONAL RAILWAYS—Continued

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930				
Jan. 5	8.35 p.m.	Lindsay St., Lindsay, Ont.	303074	Ignored stop signal and ran into train backing over crossing; car badly damaged. No injuries.
" 7	10.50 a.m.	Atwater Ave., Montreal, Que.	Que. T. 1085	Ignored stop signals and just missed being struck by train.
" 8	2.00 p.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. H. 13258	Running by stop signal given by railway employees, and narrowly escaped a serious accident.
" 9	2.35 p.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. P. 2440	Running by stop signal given by railway employees, and narrowly escaped a serious accident.
" 9	3.00 p.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. W. 1012	Running by stop signal given by railway employees, and narrowly escaped a serious accident.
" 14	1.30	East Main St., Welland, Ont.	288-799	Driving through gate. Weather foggy.
" 16	9-29 p.m.	Charlevoix St., Montreal, Que.	Que. F. 5102	Breaking through crossing gate; truck struck by train. Two occupants injured.
" 18	4.30 p.m.	Gilbert's Lane, Saint John, N.B.	N.B. 9484	Operating car over our ground running parallel with tracks at Gilbert's Lane Crossing.
" 24	9.40 a.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. F. 11742	Disregarded stop signal and almost caused serious accident.
" 24	10.15 a.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. F. 9443	Disregarded stop signal and almost caused serious accident.
" 26	8.40 a.m.	East Main St., Welland, Ont.	JE 79-14	Broke through lowered gate.
" 28	9.45 K.	123rd St. Public Crossing over old St. Albert Subd., Edmonton, Alta.	52-728	Driver did not observe approach of engine, which had bell ringing and also whistled, resulting in car being struck at slow speed, doing minor damage.
" 28	2.40 a.m.	William St., Chatham, Ont.	AC-755	Condition of roads did not permit car to stop in time.
" 29	17.50 K.	1st public crossing north of Hubalta Sta., Three Hills Sub., Calgary, Alta.		Attempted to cross in front of train; struck by train; died Jan. 29th.
" 30	18.10	24th Street, Saskatoon, Sask.		Drove across in front of train; ignoring warning signals.
Feb. 1	8.30 a.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. H. 14660	Running by stop signals given by railway employees, almost causing a serious accident.
" 3	1.00 p.m.	Charlevoix St., Lachine Canal Bank, Montreal, Que.	Que. H. 11005	Not coming to a stop at unprotected crossing when engine approaching with bell ringing and bell sounded; resulting in auto being struck.
" 3	12.10 p.m.	Hector Street, Montreal East, Que.	Que. F. 2813	Not coming to a stop at unprotected crossing when engine approaching with bell ringing and bell sounded; resulting in auto being struck.
" 5	20.41	129th Ave., or Stock Yards Rd., Crossing North Edmonton, Alta.	Alta. 68-967	Failed to notice standing train; ignored signals, colliding with box car on crossing.
" 6	9.30 a.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. 17555	Refusing to stop when stop signals given by railway crossing flagman.
" 7	12.20 p.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. H. 14696	Refusing to stop when stop signals given by railway crossing flagman.
" 10	10.25 p.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. X. 2302	Not stopping at unprotected crossing and colliding with side of engine.
" 12	2.30 p.m.	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. F. 6024	Refusing to stop when stop signals given by railway crossing flagman, almost causing serious accident.
" 13	5.00 p.m.	Drouillard Road, Walkerville, Ont.	E-1954	Ignored stop signal.



## CANADIAN NATIONAL RAILWAYS—Continued

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Feb. 15....	4.55 p.m....	Public Crossing 12 poles West M.P. 8 Wabamun Subd., Edson, Alta.	Sled.....	Engine struck sled. No one injured.
" 16....	2.00 a.m....	East Main St., Welland, Ont.	HT-901.....	Driving over crossing and speeding.
" 18....	20.30.....	124th St., Public Crossing, Edmonton, Alta.	53-191.....	Failed to stop before crossing tracks; collided with tender of yard engine which had given statutory signals.
" 18....	4.15 p.m....	Walker Road, Walkerville, Ont.	670-386.....	Stopped under gate and watchman unable to lower same.
" 21....	9.15 a.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. 19116....	Ignoring stop signals given by railway flagman, and almost causing serious accident.
" 21....	9.40 a.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. 12097....	Ignoring stop signals given by railway flagman, and almost causing serious accident.
" 21....	1.15 p.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. F. 10259..	Ignoring stop signals given by railway flagman, and almost causing serious accident.
" 23....	4.35 p.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. X. 637....	Ignoring stop signals given by railway flagman, and almost causing serious accident.
" 24....	3.05 p.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. F. 2941....	Ignoring stop signals given by railway flagman, and almost causing serious accident.
" 28....	9.30 p.m....	Crossing at 12th St., East, Calgary.	Alta. 10-927....	Driver not looking, car ran into tender of engine. Engine stopped at crossing before passing over.
Mar. 5....	9.50.....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. T. 40.....	Disregarded stop signals and had to swerve off roadway to avoid being struck by train.
" 6....	11.25.....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. T. 2204....	Almost caused serious accident by disregarding stop signals.
" 6....	12.03.....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	T. 331.....	Disregarded stop signals; had to swerve off roadway to avoid being struck.
" 6....	20.30.....	1st Public Crossing East of Bruderheim, Alta.	Alta. 736.....	Stalled on crossing and was struck by engine. Train running about 18 MPH; no personal injuries.
" 7....	10.44 a.m....	Monkland Ave., Mount Royal, Montreal, Que.	Que. L. 1013....	Not coming to a stop at unprotected crossing when engine approaching with bell ringing and whistle sounding; auto running into train.
" 7....	5.00 p.m....	Walker Road, Walkerville, Ont.	21-289C.....	Driver started while gate was being raised—breaking north side completely off.
" 8....	7.55 a.m....	Devonshire Road, Walkerville, Ont.	E-1365.....	Not observing gate down until too close to stop.
" 10....	10.20 a.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. 56924....	Disregarded stop signals and passed over crossing when train only 10' away.
" 11....	12.50 p.m....	Charlevoix St., Lachine Canal Bank, Montreal, Que.	Que. 58047....	Disregarding stop signals and almost running down flagman.
" 12....	8.25 a.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. H. 19986..	Running by railway flagman when train approaching.
" 12....	2.45 p.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. 41311....	Disregarding stop signals and almost causing serious accident.
" 13....	3.00 p.m....	Walton St., Port Hope, Ont.	Ont. P. 8044....	Disregarded stop signals.
" 14....	11.35 p.m....	St. Clair Ave., 15th District, Bathurst St., Toronto, Ont.	O-7372.....	East & South-west gates down; Auto passed under S.W. gate under N.W. gate over crossing and stopped inside of east gates. All street and gate lights burning brightly.
" 14....	22.35.....	115th Ave., crossing, Edmonton, Alta.	E-2-949.....	Engineer sounded whistle, bell ringing and headlight burning; running backward; auto approached at speed of about 20 miles per hour; struck by engine.



CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Mar. 15....	10.25 a.m....	Atwater Ave., La- chine Canal Bank, Montreal.	Que. L. 433.....	Disregarded stop signals and passed over crossing when train approach- ing.
" 16....	12.01 p.m....	Atwater Ave., La- chine Canal Bank, Montreal.	Que. T. 2207....	Disregarded stop signal and passed over crossing when train approach- ing.
" 19....	10.50 a.m....	Atwater Ave., La- chine Canal Bank, Montreal.	Que. F. 10052...	Running by stop signals when train approaching crossing.
" 20....	11.55 p.m....	Atwater Ave., La- chine Canal Bank, Montreal.	Que. 41211.....	Ignoring stop signals and passing over crossing ahead of approaching train.
" 20....	12.15 p.m....	Atwater Ave., La- chine Canal Bank, Montreal.	Que. H. 20447...	Ignoring stop signals and passing over crossing when train approaching.
" 21....	9.05 a.m....	Atwater Ave., La- chine Canal Bank, Montreal.	Que. 23885.....	Ignoring stop signals and passing over crossing when train approaching.
" 21....	2.25 p.m....	Albert St., Montreal..	Que. 45948.....	Ignoring stop signals and passing over crossing when train approaching.
" 22....	7.35 p.m....	Walker Road, Walk- ville, Ont.	E-4121.....	Running through when gate was down.
" 23....	8.45 a.m....	Atwater Ave., La- chine Canal Bank, Montreal.	Que. T. 749....	Ignoring stop signals and passing over crossing when train approaching.
" 24....	4.20 p.m....	East Main Street, Wel- land, Ont.	C.R. 881.....	Driver unable to see gate owing to ice on windshield.
" 25....	3.05 p.m....	Joliette St., Montreal, Que.	Que. 26785.....	Breaking crossing gate.
" 25....	5.00 p.m....	St. Henri Place, Mont- real, Que.	Que. L. 476....	" "
" 26....	3.02 p.m....	St. Remi St., Mont- real, Que.	Que. L. 526....	" "
" 28....	10.20 p.m....	Jeanne D'Arc St., Montreal, Que.	Que. H. 23942...	Not coming to stop at unprotected crossing; auto collided with train. Auto damaged; passenger injured about head.

## CANADIAN PACIFIC RAILWAY LINES

STATEMENT OF DANGEROUS PRACTICES AT PROTECTED HIGHWAY CROSSINGS  
WESTERN LINES (ADDITIONAL REPORT) FOR MONTHS JULY, AUGUST  
AND SEPTEMBER, 1929

## MANITOBA DISTRICT

Date	Point of Accident	Licence	Remarks
1929			
July 27....	Mile 46 Winnipeg Beach S.D. North of Panemah.	.....	Driver of auto missed planks on crossing, car slowed up but was struck before train could be stopped.
Aug. 20....	12 poles W. of Mile 51 Broadview S.D.	.....	Train struck binder as farmer was en- deavouring to drive over public cross- ing. Binder damaged, horses not injured.
Sept. 8....	1 pole E. of Mile 52 Neudorf S.D.	.....	Touring car driven by J. Perth, Welwyn, ran into side of caboose, train 82. Auto damaged.
July 26....	Harris Abattoir Co. plant, St. Boniface.	.....	Yard engine in coupling operations. Engine pushing cars over crossing and on seeing auto approaching stopped, but slack running out of the two cars was sufficient to strike auto, squeezing it between two cars, doing slight dam- age to it.

## CANADIAN PACIFIC RAILWAY LINES—Continued

## SASKATCHEWAN DISTRICT

Date	Point of Accident	Licence	Remarks
Aug. 3.....	Mile 3 Colonsay S.D.....	72-209.....	Ford car backed into side of train 60.
July 5.....	Myrtle Ave., Yorkton.....		No. 977 when backing out of transfer with light engine struck front guard of auto. Auto driver unable to stop account no brake on car.
July 7.....	F. Ave. Yard, Saskatoon.....		While on way to Union stock yard, auto ran into side of van. Failure of auto driver to note approaching train.
July 20.....	2nd Ave. N., Saskatoon.....		Auto driver slowed up and then tried to cross ahead of train.
Sept. 2.....	1st crossing E. of Balcarres.....		Auto driver apparently trying to beat train, found he could not do so and swinging car round, hit step of mail car.
Sept. 29.....	1st crossing S. of Codette.....		Driver of auto failed to see or hear approaching train. A driver just ahead of car which was struck stopped and allowed train to pass.

## ALBERTA DISTRICT

Aug. 30.....	1st crossing E. of Leader, Em- press S.D.	14-680.....	Car ran into water car, first car behind engine, No. 623, train Ex. W.
Aug. 31.....	84th Ave., Strathcona.....		Driver's attention taken up by operation of grader, the engine of which was giving trouble and he did not hear Train 521 approaching.
Sept. 24.....	10 poles N. of Mile 9 Leduc S.D.	2567.....	Driver of auto, Constable M. Monarity, did not stop at crossing over which train was passing.
Aug. 9.....	Lethbridge Yard.....	24338.....	Train Ex. W. 5047 struck truck which had stalled on crossing.

## BRITISH COLUMBIA DISTRICT

Aug. 26.....	World Siding Ramp, Vancouver.	33-823.....	Yard engine 6252 struck auto truck.
Aug. 23.....	Hudson Street, Salmon Arm. (Private crossing maintained by railway).	44-857.....	Auto truck approached from north and attempted to cross in front of train, failed to get clear and rear end of truck struck by train.
July 7.....	Highway crossing west end of station at Trail.	52-580.....	Tender of Engine 3449 struck corner of auto truck. Driver claims he was changing gears when his engine stalled at crossing. Said that he heard engine whistle for first crossing, and for main highway crossing. Not one of the three men on truck made effort to push it clear. Crossing protected by electric bell, engine bell also ringing, and engine whistle sounded twice. Auto truck driver seemed under impression that he was clear of crossing when truck was foul of engine about two inches.

## ESQUIMALT AND NANAIMO RAILWAY

July 21.....	Mile 47.8.....	25-896.....	Train No. 2 engine 460, struck auto. Brakes on auto defective.
July 26.....	Mile 72.9.....	26-106.....	Train No. 3 engine 460, struck loaded lumber truck. Truck stopped on crossing and was badly damaged.

STATEMENT OF DANGEROUS PRACTICES AT PROTECTED HIGHWAY CROSSINGS—  
WESTERN LINES—MONTHS OF OCTOBER, NOVEMBER AND DECEMBER, 1929

## MANITOBA DISTRICT

Date	Time and Point of Accident	Licence	Remarks
Oct. 9.....	Mile 3½ LaRiviere S.D. Academy Rd.		Auto ran into side of engine. Driver claimed he did not see train. Raining hard at the time.
Oct. 18.....	Just West of Holmfied Diamond, Mile 42.5 Napinka S.D.		Ford touring car stopped too close to allow train to pass. Tender step and tender truck spring of engine caught front bumper of auto and tore it off.
Oct. 18.....	100 ft. E. of elevator track switch at Hamiota, Miniota S.D.		Auto struck and slightly damaged when attempting to cross ahead of slowly moving cars.
Nov. 21.....	8th St. N.W. Portage la Prairie, Mile 0.64 Minnedosa S.D.		Driver of auto ran into side of baggage car, slightly damaging auto and baggage car. Driver said brakes would not work.
Dec. 3.....	Nairn Ave. crossing, Winnipeg		Ford sedan attempted to cross from North to South and ran into engine. Engine whistle sounded, bell ringing, headlight burning.
Dec. 18.....	Talbot Ave. crossing, Winnipeg		J. W. Tomlinson, 45 Birds Hill Road, driving a Ford sedan approached from East and ran into side of car CP-273036.
Dec. 19.....	23.27k..... Montcalm St., Winnipeg.	Not known	Gates were lowered for Train 954, man driving automobile did not notice same were down and drove into them. No damage done.

## SASKATCHEWAN DISTRICT

Oct. 4.....	15.05k..... Broadway, Yorkton	No. 18459.....	Disregarded signals and went across about 10 feet in front of cars that No. 977 was pushing over crossing for transfer track. Engine 605.
" 9.....	16.37k..... " "	93429.....	Disregarded signals and went across about 10 ft. in front of engine 1024, No. 977, which was pulling out of station.
Oct. 10.....	20th Street W., Saskatoon		Train when running at 10 miles per hour struck back bumper of auto. Auto driver evidently trying to beat train and just failed to do so.
" 24.....	16.58k..... Broadway, Yorkton	13831.....	Failed to observe signal and crossed with heavily loaded truck about 20 ft. in front of engine No. 977, which was pulling out of station.
" 26.....	15.20k..... " "	66424.....	Disregarded stop signal and crossed about 10 ft. in front of engine 805 which was backing across crossing.
Nov. 30.....	Half mile N. of Pleasantdale		Auto ran into side of engine. Driver evidently failed to see or hear approaching train till too late to stop.
Dec. 14.....	Winnipeg St., Regina	16346.....	Car crossed in front of train 308 which was moving south. Engineer kept whistle open and put train into emergency to avoid hitting car. Signal was working on crossing.

## ALBERTA DISTRICT

Oct. 18....	3.20k.....	4th St. West, Calgary.	Not known....	While gates lowered for engine working up coach yard, auto travelling at high speed ran into southwest gate breaking same.
Nov. 1....	13.00k.....	" "	43065.....	When gates lowered for freight train going west auto driven by A. S. Snyder of Didsbury ran into west centre gate breaking off top.



## CANADIAN PACIFIC RAILWAY LINES—Continued

## ALBERTA DISTRICT—Concluded

Date	Point of Accident	Licence	Remarks
Nov. 6.....	400 ft. W. of West switch at Gull Lake.	39-514.....	Auto ran into 34th car from engine, train No. 80.
Dec. 23.....	Crossing on main highway, spur line leading to Medalta Potteries Ltd. north of main line.	.....	Auto ran into cars which were being pulled from Medalta Potteries. (This accident happened on regular street crossing in Medicine Hat on private spur line leading to Medalta Potteries Ltd.).
Dec. 23.....	Mile 23.5 Red Deer S.D.....	.....	Train No. 523 struck sleigh loaded with hay which had stalled on private crossing.
Dec. 24.....	20.00k....4th St. West, Calgary	6866.....	While gates lowered for freight train going east, auto truck belonging to Campbell & Griffin Co., ran into southeast gate, breaking back of same and part of iron frame work, also glass of lamp gates.

## BRITISH COLUMBIA DISTRICT

Oct. 2.....	13.35k..... North Vancouver Ferry, Vancouver.	Not known.....	Seven women walked between train and crossing gates a space of 4 ft.
" 15.....	16.20k..... Vancouver.....	BC 71-908.....	Rushed under crossing gate when gate on opposite side of track already closed.
" 16.....	8.29k.... Powell St., Vancouver.	BC 69-293.....	Ignored stop sign.
Oct. 21.....	Schubert St., Vernon.....	.....	Horse drawn wagon attempted to cross in front of train Ex North 3472. Rear wheels of wagon caught, 50 boxes apples upset.
" 25.....	10.25k.... Powell St, Vancouver	BC 69-465.....	Ignored stop sign, engine having to stop to avoid hitting auto.
" 29.....	18.50k..... " " "	BC 73-625.....	Ignored stop sign.
Nov. 5.....	9.49k..... " " "	BC 91-374.....	" "
" 11.....	13.53k..... " " "	BC 90-781.....	" "
" 14.....	16.25k..... " " "	BC 60-210.....	" "
" 14.....	18.52k..... " " "	BC 92-609.....	" "
" 22.....	Mile 107-35 Harris Road. Cascade S.D., Hammond.	98-375.....	Auto ran into side of Extra 3626 East.
" 23.....	Dunlevy Avenue, Vancouver....	80-139.....	Auto struck by Yard Engine No. 6174.
" 25.....	9.39k.... Powell St. Vancouver	BC 1-355.....	Ignored stop sign.
" 25.....	13.08k..... " " "	BC 71-086.....	" "
" 26.....	Nor. Vanc. Ferry, Vancouver....	69-615.....	Auto ran into crossing gates.
Dec. 4.....	9.30k.... Powell St. Vancouver	BC 61-025.....	Ignored stop sign.
Dec. 9.....	Mile 35-75, Okanagan S.D.....	55-494.....	Chevrolet car attempted to cross in front of train Ex. South 573. Car struck and slightly damaged.
Dec. 11.....	Nor. Vanc. Ferry, Vancouver....	4-896.....	Auto fouled crossing gates.
Dec. 17.....	8th Avenue, Kamloops.....	43-441.....	Auto struck by Yard engine.
Dec. 17.....	Mile 2-07 Thompson S.D. Kamloops.	44-981.....	Auto struck by No. 2/82.
Dec. 23.....	Victoria Drive, Vancouver.....	1446.....	Auto cycle and side car struck by yard engine.
Oct. 1- Dec. 31.	..... North Vancouver Ferry.	.....	People cross tracks and will not use subway.
Oct. 1- Dec. 31.	..... Hastings St.....	.....	Pedestrians run under crossing gate arms in front of approaching trains.

## KETTLE VALLEY RAILWAY

Nil

## ESQUIMALT AND NANAIMO RAILWAY

Dec. 10.....	Mile 110-1.....	27-378.....	Train No. 5 engine 461, was struck on side of pilot by auto.
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## CANADIAN PACIFIC RAILWAY LINES—Continued

STATEMENT OF DANGEROUS PRACTICES AT PROTECTED HIGHWAY CROSSINGS,  
EASTERN LINES

## NEW BRUNSWICK DISTRICT

Date	Time	Crossing	Auto No.	Dangerous Practice
Nov. 13....	7.10 p.m....	Douglas Avenue.....		Ran under gates while being lowered.
" 23....	6.20 p.m....	".....		Ran under gates while being lowered.
Jan. 4....	6.30 p.m....	".....		Dashed under gates while being lowered.
" 13....	3.00 p.m....	".....		Turned on crossing.
Dec. 6....	11.00 p.m....	Fairville.....		Auto truck broke gate.
Nov. 25....		".....		Auto truck drove under east gate as it was being lowered breaking tip.

## QUEBEC DISTRICT

Nov. 5....		Bridge St., Quebec....	Que. 14825.....	Auto from North ran over crossing and broke South gate about 8 feet from end. Driver stopped and gateman took his number.
" 20....		Crown St., Quebec....	Que. H-1825....	Gateman lowered both gates and had given semaphore for C. N. train No. 11 to come ahead when auto coming from south completely broke southeast gate and four feet of southwest gate.
" 23....		Bridge St., Quebec....	Que. H-1247....	Gateman lowered south side gate for engine 6876, and was preparing to lower north side, when auto ran through and broke south side gate.
Dec. 5....		Crown St., Quebec....	Que. 16369.....	Gateman had lowered both gates for C.N.R. train 53, when auto coming from south ran over crossing, breaking southwest gate and northwest gate.
" 22....		Crown St., Quebec....	Que. T-8622.....	Gateman had lowered gates for train 96, taxi coming from south ran through and broke southeast gate in two.
" 2....		Gouin Blvd., Bordeaux.	Que. 22266.....	Gates were lowered for train No. 421. Driver of auto applied brakes but car skidded and broke gate at southeast side of track.
" 10....		Gouin Blvd., Bordeaux.	Que. F-8666.....	Truck came from south and drove through gate breaking same and stopped on eastbound track.
Jan. 1....		Crown St., Quebec....	Que. A-58.....	Both crossing gates lowered but auto bus from south ran through and broke both gates on south side.
Jan. 28....		Crown St., Quebec....	Pedestrian.....	Gateman had lowered gates for train No. 87, when young boy endeavoured to jump over the small gate protecting sidewalk on North side and in doing so broke it.
Dec. 18....		Montcalm St., Chelsea Rd., Hull.	Ont. C-256-86...	While gates were down for train, automobile struck and broke Southwest gate.
Nov. 18....		Dorval Ave., Dorval.	Que. F-5637....	Truck belonging to A. Roussi, Dorval, broke South gate arm, South of C.N.R. tracks.
Dec. 6....		Raglan St., Renfrew..	Ont. 89845.....	Auto broke gate on South side of crossing.
Nov. 23....		Raglan St., Renfrew..	Que. 76892.....	Car broke gate at North side of crossing.
Dec. 14....		Raglan St., Renfrew..	Ont. 410-339....	Car broke east gate on South side of crossing, also castings, all wood work and lantern.

## CANADIAN PACIFIC RAILWAY LINES—Continued

## ONTARIO DISTRICT

Date	Time	Crossing	Auto No.	Dangerous Practice
Nov. 5....	12.00 noon..	Marmora St., Trenton	Ont. 122-560....	Motor car attempted to cross ahead of cars which were being switched. Failed to clear and collided with cars.
Nov. 5....	2.40 p.m....	Mile 94, Belleville S.D.	Ont. C-6-433....	Truck drove on crossing, stalled and backed off barely clearing fast passenger train.
" 12....	3.35 p.m....	Bathurst Weymss....	Ont. 338-620....	Auto collided with side of passenger train.
" 16....	9.15 p.m....	Whitby, Brock St....	Ont. 6-347....	Auto collided with tender of an engine.
" 22....	4.35 p.m....	Peterboro, Rink St....	Ont. 272-638....	Cars being switched and auto approaching crossing without seeing cars until too late to stop and cars struck front end of auto.
" 28....	11.45 p.m....	Peterboro, Aylmer St.	Ont. 272-991....	Auto skidding 70 feet into side of freight train.
Dec. 4....	11.25 a.m....	Mileage 9, Belleville S.D.	Ont. 419-665....	Auto ran into side of passenger train.
" 18....	12.30 a.m....	Bowmanville, Seugog St.	Ont. 218-387....	Auto crashed through gates account ice on windshield.
" 27....	10.51 a.m....	Cobourg, George St...	Ont. 395-942....	Auto ran into side of passing train account road icy.
Nov. 18....	1.30 a.m....	St. Clair Ave., Toronto.	.....	Auto ran into and broke lamp on northeast gate.
" 26....	5.45 p.m....	St. Clair Ave., Toronto.	Ont. 60-415....	Auto broke portion of northeast gate.
Dec. 26....	.....	Front Street West....	Ont. 105-797....	Auto ran into gate breaking off point.
Nov. 30....	.....	John St., Toronto....	Ont. 114-861....	Auto ran into crossing gate.
Dec. 13....	.....	John St., Toronto....	Ont. 17-300....	Auto ran into crossing gate breaking off point.
" 7....	.....	Osler Ave., Toronto..	Ont. 107-101....	Auto ran into and damaged crossing gates.
Nov. 10....	.....	Lansdowne Ave., Toronto.	Ont. 48-693....	Auto passed under South gate as it was being lowered and broke North gate breaking off point.
" 17....	.....	Lansdowne Ave., Toronto.	Ont. 28-152....	Auto skidded into gate, breaking point.
" 17....	.....	Lansdowne Ave., Toronto.	.....	Auto ran into both north and south gate breaking point and apron on each gate.
" 3....	3.32 p.m....	Adelaide St., London.	Ont. 141-474....	Auto disregarded watchman's stop sign and crossed tracks ahead of yard engine.
" 3....	3.18 p.m....	Adelaide St., London.	Ont. 235-596....	Auto disregarded watchman's stop sign and crossed tracks ahead of freight train.
" 9....	4.15 p.m....	Adelaide St., London.	Ont. C-209....	Auto truck disregarded watchman's stop sign and crossed tracks ahead of two locomotives.
" 15....	6.10 p.m....	William St., Chatham	Ont. C-29-869..	Auto ran into south gate breaking off arm. Travelling on wrong side of street.
" 18....	12.30 p.m....	Richmond St., London.	Ont. 138-013....	Auto ran into gate breaking off arm, account rain on windshield.
" 16....	12.13 p.m....	Adelaide St., London.	Ont. 475-022....	Auto disregarded watchman's stop sign and crossed tracks in front of locomotives.
" 24....	.....	Queen St., Chatham..	.....	Auto ran into south gate breaking it.
" 23....	9.55 p.m....	Pall Mall St., London.	Ont. 138-886....	Auto ran into gate arm breaking it.
" 23....	7.05 p.m....	Richmond St., London.	Ont. 139-357....	North gate lowered and auto passed under south gate and refused to back up. Had to hold and raise gate to allow him to proceed.
" 24....	3.05 p.m....	Adelaide St., London.	Ont. 234-589....	Auto disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 27....	8.25 p.m....	Richmond St., London.	.....	Auto travelling 45 miles per hour ran through and broke gate arm.
" 30....	5.30 p.m....	Queen St., Chatham..	.....	Auto ran into and broke south gate arm.



## CANADIAN PACIFIC RAILWAY LINES—Continued

## ONTARIO DISTRICT—Concluded

Date	Time	Crossing	Auto No.	Dangerous Practice.
Dec. 10....	9.40 p.m....	Richmond St., London.	Ont. 141-050....	Auto skidded into gate arm breaking it account icy pavement and to avoid striking another auto.
" 18....	11.35 p.m....	Queen St., Chatham..	.....	Auto ran into gate arm breaking casting.
" 18....	10.05 p.m....	William St., Chatham	Ont. 196-491....	Auto ran into gate arm breaking it. Weather storming.
" 18....	10.20 p.m....	Richmond St., London.	Ont. 153-256....	Auto ran into and broke gate arm. Weather storming.
" 19....	.....	Thames St., Ingersoll.	Ont. C-59-030..	Truck skidded into gate arm breaking it. Very stormy.
" 23....	1.05 p.m....	Mil. 52 O.H. & G. S.D.	.....	Snow plough extra struck sleigh killing driver. Crossing bell ringing and engine whistle sounded and engine bell ringing.
" 30....	7.24 p.m....	Quebec St., London...	Ont. 133-019....	Auto crossed tracks in front of yard engine.
Jan. 6....	5.35 p.m....	Quebec St., London...	Ont. 152-551....	Auto crossed tracks in front of yard engine.
" 7....	6.15 a.m....	Eramosa Rd., Guelph	Ont. 111-889....	Auto ran into gate arm breaking it. Raining hard at the time.
" 22....	11.13 p.m....	Adelaide St., London.	Ont. L-3321....	Watchman stopped auto to allow passenger train over crossing. Yard engine pushing coaches on opposite track approached but auto drove in front of them disregarding stop sign.
" 25....	7.30 p.m....	Queen St., Chatham..	Ont. 193-315....	Auto ran into gate arm breaking it.
" 25....	2.30 p.m....	Pall Mall St., London.	Ont. C-27-906..	Auto ran into gate arm as being lowered to protect switch engine movement.

## TORONTO, HAMILTON AND BUFFALO RAILWAY COMPANY

Date	Time	Crossing	Licence No. of Auto	Dangerous Practice
1930				
Jan. 29....	2.10 p.m....	Mohawk Street, Brantford, Ont.	239070.....	Ignoring crossing signals.
Feb. 1....	6.20 p.m....	James Street, Hamilton, Ont.	C17-783.....	Didn't see gates; drove into same, breaking both.
" 4....	7.35 p.m....	John and Hunter St., (southeast gate), Hamilton, Ont.	H.3042.....	Drove through crossing gate which was lowered for approaching train.
" 5....	9.20 p.m....	John Street, Hamilton, Ont.	Y-3238.....	Windshield frosted could not see lamp on gate. Broke small arm of gate.
" 12....	2.05 a.m....	Market Street, Brantford, Ont.	CN-79.....	Drove into side of stationary freight train which had been stopped about two minutes. Windshield frosted; view obstructed.
" 17....	1.05 p.m....	Barton Street, Hamilton, Ont.	J-1620.....	Failed to observe wigwag and light signals and drove in front of train. Auto damaged; passenger not injured.
Mar. 19....	12.10 a.m....	James and Hunter Sts. Hamilton, Ont.	.....	Broke crossing gates, also lantern.



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# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

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Ottawa, May 1, 1930

No. 4

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*Application of the City of Oshawa, Ont., for an Order requiring the highway known as Simcoe Street, Oshawa, and the tracks and railway of the Oshawa Railway Company to be carried under the tracks and railway of the Canadian National Railways by means of a subway.*

File 228

NOTE.—This matter is set down for hearing upon the application of the city to have the various questions arising under the Reasons for Judgment, dated November 26, 1928, settled by the Board.

### JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

In the hearing of January 21, 1930, submissions were made, which have been considered, and some readjustments have been arrived at in regard to what is contained in the judgment above referred to. There had been raised the question of extra width and extra height of the subway, these two items being asked for by the railways. The city also raises the question of the cost of extra drainage due to the greater depth of the subway.

Reference may be made to the action taken in the North Toronto Grade Separation. In dealing with the Yonge Street subway which, at the request of the city, was given an 18-foot headroom instead of 14 feet, as provided for in the original plans, and which also increased the width by 20 feet, the matter was dealt with in the order. Other matters—e.g., sewers and reduced approach grades—were also dealt with in paragraphs 4 and 6 of the order, which read as follows:—

“4. That all work in connection with the said subway, except that affecting water pipes, sewers, sidewalks, and pavements, be done by the railway company: the city to bear and pay the additional cost of the construction of the said subway as provided for herein, including additional land damages, over and above what would be the cost of a subway of similar type of construction having a width of 66 feet, a headroom of 14 feet and a grade on the approaches of five per cent, except that the railway company bear the additional cost of extending the walls of the subway to accommodate grades of  $2\frac{1}{2}$  per cent.



"6. That the city do all the work in connection with the maintaining, relocating or renewing of water pipes and sewers, and construct the pavements and sidewalks made necessary by reason of the construction of the said subway, the division of the cost of the work required to be done under this paragraph to be the same as that provided in paragraph 4 of this order with regard to the portion of the work to be done by the railway company."

The extra width and height of the subway at Simcoe street, Oshawa, were estimated at \$11,000. As pointed out in the judgment, the railways were responsible for these items. The matter has been checked by the Board's Engineering Department and it seems more satisfactory to leave the question of additional cost of these items to stand over until the work is completed. The matter can then be more readily adjusted.

In the matter of extra drainage cost: If the subway were being built to a 14-foot depth as favoured by the city, it would seem that the cost of the drainage readjustments should be charged against the general scheme. However, the extra depth of the subway is required for the reasons above set out. This extra depth being brought about by the railways' needs, it is justifiable to charge it against the railways. This is estimated at \$3,000. However, the exact amount involved may be left to be dealt with when the work is completed.

The judgment provided that after provision was made for certain deductions set out therein the balance of the cost should be divided on the basis of 57 per cent payable by the Canadian National Railways (the Electric Railway being included therewith) and 43 per cent by the city. Subject to the deductions set out in these reasons for judgment, the same percentage distribution should be made.

As pointed out, the work was estimated at approximately \$250,000; this is inclusive of land damages. The Board can give 40 per cent, but not exceeding \$100,000, out of the Grade Crossing Fund. This would leave in round numbers \$150,000 to be dealt with.

The judgment set out that the paving of the subway was at the city's expense, as the city had had the burden of paving the streets. This is the general rule, but may, of course, be subject to further consideration on the particular facts; and particular facts may have a modifying effect on the rule. In the present instance, it appears that the agreement between the city and the Oshawa Railway is so old that it does not provide how cost of paving shall be apportioned between the city and the railway. It is represented that in fact the Oshawa Railway and the city have made a separate agreement in each case when a city street car carrying street car tracks required paving; and it is represented that in all cases the railway has agreed to bear the extra cost occasioned by the tracks, and that in all but two cases the railway had borne the whole cost of paving within the limits of the road-bed. In view of the representations made as to what has been the practice—and these were not controverted—it appears justifiable to give weight to this.

Paving of the track strip, but not including the track, was estimated as follows: 1,100-foot strip, 20 feet wide, \$19,800. The question of the cost for the 2 feet increase in width (difference between 60 feet and 58 feet) was raised, this cost being estimated at \$990. In view of what has been set out above, this is a charge which may properly be made against the Electric Railway. In this case, as in the others, these estimates may be subject to final adjustment when the work is completed.

Subject to this comment, the situation is as follows:—

(a) Estimated cost of subway, including land damages . . . . .	\$250,000
(b) Maximum contribution from Grade Crossing Fund. . . . .	100,000
(c) Sum left to be apportioned. . . . .	150,000
(d) Estimated cost of additional width and height . . . . .	11,000

(e) Leaving sum to be apportioned of . . . . .	139,000
(f) Estimated additional cost of drainage due to additional depth . . . . .	3,000
(g) Sum to be apportioned . . . . .	136,000
(h) Cost of paving electric car track strip, but not including lifting track..	19,800
(i) Cost of paving 2-foot extra strip (extra width of subway) . . . . .	990
(j) Sum to be apportioned . . . . .	115,210
(k) Apportionment on basis of 57% allotted to railways . . . . .	65,669
(l) Balance of 43% allotted to the city amounts to . . . . .	49,541

In the original judgment emphasis was laid upon the importance of the closing of Albert street. Albert street crosses the railway yards about 630 feet east of Simcoe street and 480 feet east of the proposed subway. At the point where the street crosses the yards, there are ten tracks. These tracks are laid over a surface 66 feet in width by 230 feet in length. It is not necessary to labour unduly the importance of tying up the Albert street situation to the Simcoe street grade separation. There is no question but that it is very much in the interest of public safety. It has been estimated that the cost in connection with the closing and diversion of Albert street in the Simcoe street grade separation will amount to from \$10,000 to \$12,000. The Board has no power to close highways. It has, however, power to close and divert. In *re Closing of Highways at Railway Crossings, 15 Can. Ry. Cas., 305.—Ruling of Chief Commissioner Drayton.*

I am of opinion that order should go authorizing the closing and diversion of Albert street; 40 per cent of the cost to be paid out of the Grade Crossing Fund; the balance to be borne by the Canadian National Railways.

Any matters concerned with engineering details or adjustments of costs shall be dealt with by an engineer of the Board.

April 3, 1930.

Commissioners Lawrence, Norris, and Stoneman concurred.

VIEN, DEPUTY CHIEF COMMISSIONER:

I concur in the views expressed by the learned Assistant Chief Commissioner in his judgment, except as regards the power of the Board to close highways.

In my opinion, under sections 256 and 257 of the Railway Act, when a railway crossing is involved, the Board has the power to order: "that the railway be carried over, under, or along the highway, or that the highway be carried over, under, or along the railway, or that the railway or highway be temporarily or permanently diverted, or that such other work be executed, watchmen or other persons employed, or *measures taken* as under the circumstances appear to the Board best adapted to remove or diminish the danger or obstruction."

In the ruling of the Board of May 10, 1913, *re* the closing of highways at railway crossings (15 Railway Cases, p. 305), the Board's jurisdiction was construed as being confined to the extinguishment of the public right to cross the railway company's right of way. I concur in this finding, but, in my opinion, the powers of the Board to extinguish the public right to cross the railway company's right of way is not limited to cases when a road diversion is ordered. Under the sections of the Railway Act above quoted, the Board could, for instance, order the railway company to fence its right of way opposite two portions of a street, as the measure, in the opinion of the Board, best adapted to remove or diminish the danger or obstruction.

This is not of capital importance in the present case, however, and I agree that an order should go as suggested by the Assistant Chief Commissioner.

OTTAWA, April 4, 1930.



*Application of the Canadian Pacific Railway Company under subsection (c), section 7, of General Order No. 236, for approval of plan No. F. 10-35, dated November 25, 1929, showing proposed revision of clearances of standard mail crane for use on the company's Montreal and Ottawa Sub-division.*

Case 3365

## JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made for the revision of clearances of the standard mail crane in use by the railway on its Montreal and Ottawa Subdivision. It is stated that the mail catchers as shown on the standard plan which was approved under Order No. 13939, dated June 14, 1911, overlap the operating rods of the standard 10-inch stand pipe by  $1\frac{1}{4}$  inches, and will overlap the new 12-inch stand pipe by  $2\frac{1}{2}$  inches. It is set out that at one or two points the mail cranes and pipes are on the same side of the track, and if the mail catcher is extended when passing the stand pipe considerable damage might be done. It is further set out that it is not possible to change the location of the mail cranes at said points.

Under date of May 27, 1908, the Canadian Pacific Railway Company submitted for the approval of the Board a blue print showing a proposed mail crane for use on railway mail cars. This showed a distance of 7 feet  $1\frac{3}{4}$  inches from the centre of the track to the extreme point of the arm of the mail crane when in position. The height from the bottom of the rail to top of the arm of the mail crane when in position was shown as 10 feet 10 inches. The distance from the mail catcher, when in use, to the extreme point of the finger on the stationary portion of the mail catcher was shown as 2 feet  $1\frac{3}{4}$  inches. The following recommendation was made to the Board by its Inspector of Railway Equipment and Safety Appliances, said report being made under date of September 25, 1908:—

“I send you herewith File No. 7673 *re* the adoption of a standard mail crane.

“Would say that after going into this matter thoroughly with the Post Office Department and the engineer of the Canadian Pacific Railway, I would advise the adoption, by the Commissioners, as a standard for mail cranes, the distances shown on the attached blue print from the centre of the rail to the extreme point of the finger on the mail catcher; also from base of rail to top of arm. I would further recommend that all railways be notified at the earliest possible date of the change recommended, as follows:—

‘That on and after January 1, 1909, it shall be unlawful for any railway company to erect or maintain any mail crane on its system which does not conform to the distances from the bottom of the rail to the top of the arm on the mail crane, that is 10 feet 10 inches when in position, and 7 feet  $1\frac{3}{4}$  inches from the centre of the track to the extreme point of the arm of the mail crane when in position.’”

Thereafter, General Order No. 17 issued providing as follows:—

“*It is ordered:* That every railway company subject to the legislative authority of the Parliament of Canada, operating a railway by steam powers, using mail cranes, be, and it is hereby, forbidden to erect, place, or maintain, on or after the first day of January next, any mail crane along its line of railway, at a distance less than seven (7) feet one and three-quarter ( $1\frac{3}{4}$ ) inches from the centre of the track to the



extreme point of the arm of the crane when in position, or at a height less than ten (10) feet ten (10) inches from the bottom of the rail to the top of the arm when in position.

“And it is further ordered that every such railway company failing or neglecting to comply with the foregoing regulation be subject to a penalty of one hundred dollars for every such failure or neglect.”

Plans, in accordance with the standard set out in the Board's order, were approved.

No move to vary the conditions which had been approved by the Board's order was made until the present application was received. The only factor which is definitely set forward as justifying the change asked for is the increase in the size of the stand pipe.

The railway desires to make a test in regard to the readjustment of the clearances of the mail cranes. It is proposed to lengthen by 4 inches the arm of the crane, which is the fixed portion, and to shorten to the same extent the mail catcher, which is the moving part of the apparatus and attached to the car. It is proposed to try out this experiment on the Montreal and Ottawa Subdivision. There are seven points on the subdivision where mail cranes are located, viz: Como, Hudson, Hudson Heights, Choisy, Rigaud, St. Eugene, and Caledonia Springs. It is proposed that instead of the distance of 7 feet  $1\frac{3}{4}$  inches from the centre of the track there shall be a distance of 6 feet  $9\frac{3}{4}$  inches, and also that in place of the 2 feet  $1\frac{1}{4}$  inches as at present there shall be 1 foot  $9\frac{3}{4}$  inches.

It is alleged that the present arm attached to the car may, when it is up, strike the stand pipe. It was urged that by cutting off 4 inches on one side and adding this to the fixed portion of the apparatus this will give the moving part more space in which to clear the stand pipe. It is stated that the moving part of the apparatus is bound, when open, to come in contact with the stand pipe at the side of the track; and it is said if this does happen there is danger to the mail attendant being thrown out.

No record of any accident affecting the mail attendant and resulting from any portion of the mail crane striking against the stand pipe was submitted. The Board is glad that it has no record of any accident attaching to the present installations.

The engineering representative of the railway said:—

“Our experiment is not to find out whether the standard mail catcher will strike the stand pipe. The experiment is suggested by the mail people, with a view to ascertaining whether the mail catcher and mail crane will work together and pick up the mail bag.”

Continuing, he said:—

“I do not believe, Mr. Commissioner, that the length of the fingers of the crane is the essential feature in the problem. The test is to ascertain whether the combination will work or not. May I say this, in order to clear up the mixture of thought we seem to have. I think there is no question in the mind of any representative of the company but that the suggested combination of mail crane and mail catcher will work perfectly well; but Mr. McNab, Chief Superintendent of the Railway Mail Service, has requested that we make a test on the M. and O. before going further in that particular line. The railway company did not contemplate a test until they were requested by the Mail Service to make such a test on the M. and O. subdivision and see if it would work.”

While it is set out that the Post Office Department was apparently of opinion that there should be a tryout before the new system was installed, it was not suggested that the department had asked for the change in the first place. The following discussion took place between Mr. Best, representing the B.L.F. and E., and Mr. Prevost, counsel for the railway (p. 492):—

“Mr. BEST: . . . Now, I take it that there has been no complaint originated because of the men experiencing any difficulty in catching the bags either due to their weight or to the length of the arm, which is thrown out to catch the bag.

“Mr. PREVOST: No, there have been no representations.”

Representations were made on behalf of the Brotherhoods that with the increasing size of motive power it was exceedingly important to guard against narrowing clearances, it being urged that such narrowing might increase the danger to the men in the cab looking out of the windows.

The Board is anxious to do everything possible to aid in conservation of safety. It must be sure that in taking action in one direction it is not contributing to danger in another. Reference has been made to the danger to the mail attendants, but, as presented, this was conjectural, not actual, no evidence being submitted on the subject.

If the location of the mail-catch post is not too close to the stand pipe, there should be no difficulty in the mail clerk operating the car attachment to pick up the bag after the stand pipe is passed, or dropping it after the mail bag is taken into the car and before the stand pipe is reached.

The Post Office Department, on account of its employees, is vitally interested. No representations have been received from it in regard to the rearrangements proposed.

On the present record, there has not been made out such a case as would justify the Board in approving of the reduced clearances asked for. It is suggested that if the railway company is satisfied that dangerous conditions exist in connection with the locations of the mail catcher posts, it should look into the situation with a view to seeing what can be done in the way of placing them further away from the stand pipe, where necessary. This would have in view providing sufficient space for the mail clerks to operate their car attachments without coming in contact with the stand pipe.

As above indicated, while reference is made to the possibility of the car attachment coming in contact with the stand pipe, no evidence that it did in fact so happen was placed before the Board.

April 4, 1930.

Commissioners Norris and Stoneman concurred.

## ORDER NO. 44595

*In the matter of the application of the Canadian Pacific Railway Company under Section 7, Subsection (c) of General Order No. 236, for approval of plan No. F. 10-35, dated November 25, 1929, showing proposed revision of clearances of standard mail crane for use on the Company's Montreal and Ottawa Subdivision.*

Case No. 3365.

TUESDAY, the 15th Day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Ottawa, March 4, 1930, in the presence of counsel for and representatives of the Canadian Pacific Railway Company, and representatives of the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Fireman and Engineers, and the Brotherhood of Railway Trainmen, and what was alleged; and upon the report and recommendation of its Chief Operating Officer,—

*The Board Orders:* That the application be, and it is hereby, refused.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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*Application of the Canadian Pacific Railway Company for authority to construct the tracks of its Lanigan to Prince Albert Branch at grade across the tracks of the Canadian National Railways, in the SW.  $\frac{1}{4}$  of section 19, township 42, range 24, West 2nd meridian, Saskatchewan, at Mileage 60.19 of said Branch.*

File 36655.13.

NOTE.—This matter is set down for consideration of the question of the apportionment of the cost of providing, maintaining and operating the interlocking plant referred to in Section 3 of the operative part of Order No. 43863, dated November 22, 1929; as well as the question as to who shall bear the expense of the diamond to be inserted in the track of the Canadian National Railways under Section 2 of said Order.

## JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application for leave to cross the tracks of the Canadian National Railways at the point in question was made by the Canadian Pacific Railway Company under date of October 30, 1929. It was urged that the crossing should be obtained with as little delay as possible, the question of cost to be reserved.

The Canadian National replied on November 7, 1929, that while it had no objection to the approval of the crossing, it objected strongly to the reservation of the question of cost. It urged that the whole cost of the crossing, including



protection, should be on the Canadian Pacific. It was stated that the Canadian National was actually constructed and in operation with the sanction of the Board, and that it was not apparent on what theory the Canadian Pacific should now ask the Canadian National to pay any portion of the cost.

While reference was made in letter of November 7, 1929, to the line being in operation, it was not until Order No. 43891, of November 25, 1929, had issued that permission to operate at the point in question was obtained by the Canadian National Railways.

Order No. 43863, of November 22, 1929, issued, permitting the Canadian Pacific to construct, at grade, the tracks of its Lanigan-Prince Albert Branch across the tracks of the Canadian National at the point in question. The order provided that the Canadian Pacific, at its own expense, was to insert a diamond in the tracks of the Canadian National at the said crossing; that the crossing was to be protected by an interlocking plant; and that the question of the apportionment of cost of providing, maintaining, and operating the interlocking plant was to be reserved for further consideration.

Exception was taken by the Canadian Pacific to the allocation to it of the cost of the diamond in advance of the general allocation being made. On December 5, 1929, the parties were advised that the provision in respect of the cost of the diamond had been placed in the order in error, and that the matter would stand to permit the whole cost of the interlocking plant, including the diamond, to be considered and dealt with when the matter was set down for consideration of apportionment of cost.

It is urged by the Canadian National that the question of allocation of cost, which was reserved, is covered by the senior and junior rule, and reliance is placed on what is submitted as the established policy of the Board. The Canadian Pacific claims that the senior and junior rule has not the rigidity of law; that its application may be varied by circumstances; and that what is involved is a question of fact, not of law.

The Canadian Pacific sets out that the authorization of Parliament was granted to the two lines concerned during the same session of Parliament, and that both were in process of construction at the same time. It is asserted that the hands of the Board are not so tied as to prevent it exercising its discretion. It is claimed that in point of right the Canadian Pacific's position is as strong as the Canadian National, equities being at least equal. It is represented, therefore, that the costs involved should be divided.

The facts as presented in regard to the two lines in the period leading up to the work at the crossing may be summarized, as set out in the respective contentions of the two parties:—

#### *Canadian Pacific*

The application for authority to construct a line from Sutherland, Sask., northeast of Saskatoon, to Melfort, on the Prince Albert Branch, was sanctioned May 1, 1929.

The application of the Canadian National for authority to construct a line from Aberdeen, on its line northeast of Saskatoon to Melfort was sanctioned June 14, 1929. Both these applications were, therefore, before Parliament during the same session. Nothing is alleged by the Canadian Pacific as turning on the priority of sanction.

On May 9, 1929, the Canadian Pacific applied for approval of route map of the Lanigan-Prince Albert Branch from mileage 0 to 56.56. On May 11, 1929, application was made by the Canadian Pacific for approval of the same line from mileage 56.56 to 117.3. This was approved on June 7, 1929, by Order No. 42777.

Exception having been taken to the crossing just at the east end of the Humboldt yard, on June 7, 1929, Order No. 42776 issued approving the location from mileage 0-20, and from mileage 40-56.56; holding in abeyance the portion of the location ten miles on either side of Humboldt. On June 19, Order No. 42813 issued approving the route map from mileage 20-40.

In the Canadian Pacific presentation, it was stated that on May 29, 1929, the Canadian National had secured an option of the right of way through the quarter-section involved. It is claimed by the Canadian Pacific the option was not filed and that there was not notice of it. On June 3, the Canadian Pacific obtained an option which was filed at the Land Title office in Prince Albert, a caveat being filed.

While representation is thus made by the Canadian Pacific in regard to the option, the Canadian National relies upon the proceedings under the Expropriation Act later referred to. The Canadian Pacific urges that the construction over which it desired to carry its line was an isolated portion of the Canadian National, and there was no authority for holding that the company, by constructing an isolated piece of track at the supposed or expected place of crossing of the Canadian Pacific, could put itself in shape to claim seniority.

As a matter of record, the grading contractor of the Canadian Pacific, when he reached the point of crossing at about Mile 60 (Reynaud), found that the Canadian National grade had been constructed at this point, and that in addition to the main line there had been provided a grade for passing siding and a station track. The Canadian National stated it had not realized that the Canadian Pacific was coming to the point in question where the Canadian National had located its siding and its tracks. After discussion, the Canadian Pacific agreed to swing its line to the west so as to avoid going across the three tracks concerned.

Reference was made to the Canadian National having filed a plan in the Land Titles office on July 7. It was urged that the Canadian National did not have the requisite authority for the construction of the railway until the Order in Council was passed on July 19. It was argued that at the time the question of the crossing arose, the Canadian National did not own the fee in the land at the point in question.

#### *Canadian National*

It is submitted by the Canadian National that under its legislation there is necessary (a) sanction of the Minister of Railways and Canals to a plan; (b) approval of the Governor in Council by Order in Council; (c) that the power to take land arises under the Expropriation Act. *Revised Statutes of Canada, 1927, an Act to incorporate the Canadian National Railway Company, Chap. 172, Sec. 21 and 17.* The latter deals with the question of the Expropriation Act.

It is represented that to obtain the advantage of the Expropriation Act, a plan has to be filed signed by the Minister of Railways and Canals or by the president or by the vice-president of the Canadian National. When this is done, the land at once is vested in the company.

Reference was made to subsection 2 of section 17 which provides in clauses (a) and (b) that any plan deposited under the provisions of the Expropriation Act may be signed by the Minister of Railways and Canals, on behalf of the company, or by the president or any vice-president of the company; that no description need be deposited; and that the land shown upon such a plan so deposited shall thereupon be and become vested in the company.

A plan, it is represented, was prepared, signed by the vice-president, and deposited in the Land Titles office at Prince Albert on July 6, 1929. It is therefore claimed that in virtue of this plan, filed in compliance with the legislation,



the Canadian National owned by statute the fee of the right of way for the whole of this line, including the land at the point in question. A certificate was issued to the Canadian National Railways by the Land Titles office on August 13, 1929. While this was in accordance with the ordinary practice, the Canadian National takes the position that in view of the provisions of the Expropriation Act which vests the title with the filing of the plan, subject only to the payment of proper compensation and damages in accordance with the provisions of the statute, it is a matter of indifference whether the Land Titles office issues a certificate or not.

Formal application was made by the Canadian Pacific to cross the Canadian National at Reynaud on the revised location. As already pointed out, Order No. 43863, of November 22, 1929, issued granting this, subject to the reservation of the question of cost of construction and maintenance of the diamond and of the interlocking plant.

The order for opening for traffic dated November 26, 1929, and Order No. 43891, which has already been referred to, cover a mileage of 19.5 miles easterly from Wakaw, with a speed limitation of 15 miles an hour. In the report of the Board's Engineer on the application for opening for traffic it is stated the opening was required for the moving of grain out and the enabling of merchandise to be brought in.

Reliance is placed by the Canadian National on the *Kaiser Crossing Case*, *Can. Nor. Ry. Co., vs. C.P.R.*, 7 *Can. Ry. Cas.*, 297. The Canadian Pacific contends that the special circumstances herein concerned distinguish the present from the *Kaiser Crossing Case*; and it also contends that there were special circumstances which were given weight in the latter.

In the *Kaiser Crossing Case*, the Chief Commissioner pointed to the following criteria as being pertinent in determining the seniority of the Canadian Pacific: (a) it was a railway in actual occupation, (b) with existing work upon the grades, and (c) with the ownership of fee at the point of crossing.

Items (a) and (b) are not in dispute. It is admitted that in the present case the Canadian National was senior in actual construction and that its rails were on the ground when the Canadian Pacific applied for leave to cross them. As pointed out, item (c) has been questioned from the standpoint of whether the powers under the Expropriation Act have been properly exercised, and whether the exercise of such powers as are claimed to be sanctioned by the Act itself are *intra vires*.

It is not the function of the Board to pass upon the constitutionality of the statutes of Parliament. As pointed out at the hearing, attack on this ground must of necessity look to another forum. On consideration, the Canadian National is senior at the point of crossing and the cost attaching to the crossing must be borne by the junior road.

Commissioners Lawrence, Norris and Stoneman concurred.

April 15, 1930.



*Application of the Canadian Pacific Railway Company, under Section 252, for authority to construct its second track across the tracks of the Canadian National Railways by means of an undercrossing in Lot 6, Con. 4, Tp. McKim, District of Sudbury, Ont., at Mile 79.95 on the applicant company's Cartier subdivision.*

File 9188.106.

## JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of August 7, 1912, the Canadian Northern Ontario Railway Company applied for authority to cross the lines and tracks of the Canadian Pacific Railway Company with the main line tracks of the Canadian Northern Ontario Railway by means of an overhead crossing.

Under date of September 16, 1912, the Canadian Pacific Railway acknowledged receipt of the plan of proposed crossing and, after referring to the fact that the intention now was to raise the grade across the tracks of the Canadian Pacific Railway so as to allow of additional headroom, continued—

“On behalf of this company, I beg to say that we have no objection to the crossing as shown on the revised plan, providing the full statutory clearance under the bridge is given, and that the opening is left wide enough for two tracks with 13-foot centres with the statutory clearance on each side.”

This was, it was stated, subject to detail plans being submitted. Order No. 17524, of September 18, 1912, issued authorizing the crossing and providing that detail plans of the structure were to be submitted for the approval of the Board's Engineer and the engineer of the Canadian Pacific Railway Company.

The plan was duly filed and approved by the Engineer of the Board under date of December 23, 1912. Mr. Simmons, now the Chief Engineer of the Board, placed thereon a note reading:—

“The Canadian Northern Railway is to make provision for additional tracks whenever the Canadian Pacific Railway requires them.”

The Canadian Northern Railway, in its letter of November 28, 1912, in submitting plan in triplicate, said—

“You will note that the piers are on the right of way of the Canadian Pacific Railway and the Canadian Northern Ontario Railway Company has no objection to approval on the condition that if the Canadian Pacific Railway Company at any time in the future constructs more tracks than at present existing on the right of way, this company will make the necessary changes in structure.”

The above is introductory to the application now before the Board for authority to construct a second track of the railway across the tracks of the Canadian National Railways by means of an under-crossing. The Canadian Pacific has a grade revision plan in the territory in question under which it is revising to a 0.95 grade.

In the application now launched, the Canadian Pacific states that at the time Order No. 17524 issued, it was understood that there was in contemplation the building of a second track, but that in order to allow the Canadian Northern to cross the existing line of the Canadian Pacific a temporary span was constructed.

The Canadian National contends that when Order No. 17524 issued it was not free to put in a permanent work because the Canadian Pacific was not then able to locate its second track; and it is further contended that if the Canadian National had at that time constructed a permanent work, the Board would hesitate to make the Canadian National changes at the present time.

The Canadian Pacific now states that its second track is being built and that as the temporary structure is still maintained, the Canadian Pacific desires to have it altered so as to permit the work being carried out in accordance with the plan and profile submitted with the application.

There is agreement that the trestle as it at present stands is temporary and its life has nearly run out. It is, however, contended by the Canadian National that after the lapse of years the right to have a structure is not temporary; and objection therefore is made by the Canadian National to the rearrangement asked for by the Canadian Pacific in so far as they would involve expenditures by the Canadian National in respect of the rearrangement of the overhead structure.

In answer, the Canadian National said it would offer no objection to the double tracking of the Canadian Pacific line, and that it would assume the expense of making the necessary changes in the overhead bridge to accommodate the second track. It was, however, pointed out that as the Canadian Pacific proposed to construct their second track at a higher level than the present one, this would have the effect of reducing the vertical clearance slightly below standard. It was assumed the Canadian Pacific would have no objection to this reduced clearance, for if it did it would mean that either the Canadian Pacific grades would have to be lowered or the bridge would have to be raised. It was said that it was possible that in the reconstruction of the bridge a greater clearance could be obtained without inconvenience or additional expense. If it could not, the Canadian National said it would be glad of the assurance that it would not be necessary for it to go into the heavy additional cost of raising the structure as well as track at the point in question.

To build to the grade that the Canadian Pacific is working on would involve a lift in the Canadian National track of approximately 3.71 feet. The Canadian Pacific stated it would not be justified in agreeing to a less than standard clearance, and pointed out that the traffic and operating conditions were such as to necessitate the full vertical clearance. While there was difference of opinion on this subject, it would not appear that the Board would be justified in directing here the less than standard clearance.

Mr. E. W. Oliver, on behalf of the Canadian National, raises the question of the momentum grade. This and the matter of vertical clearance are dealt with in the following memorandum of the Board's Chief Engineer:—

“Approaching the crossing on the Canadian National Railway from the west, which is the long approach, the track, at present, starts from the level grade and rises at the rate of 1.4 per hundred for a distance of 2,900 feet at the point of crossing. I take it that the Canadian Pacific Railway proposition is to start at this point 2,900 feet from the crossing and build a parallel grade 3.71 feet higher than the present track, and retaining the present rate of ascent—1.4 per 100.

“The Canadian Pacific Railway plan shows the low steel to be raised the same distance, but I do not think this was intended as it gives an overhead clearance of about 23 feet when only 22 feet 6 inches is required. Probably the additional height was intended to take care of the additional distance required between the low steel and base of the rail on account of the increased length of the span.

“The Canadian Pacific Railway estimates the cost of raising the grade at \$2,000 for the trestle, some 880 feet in length, and \$4,000 for the balance of the track, or some 2,020 feet in length. I am of opinion that this estimate is correct.



“As to momentum grades, Mr. Oliver in answer to question from Mr. Flintoft, page 591, Notes of Hearing, said:—

‘I am assuming that a train will reach that point, Station 42·18, at a speed of 15 miles per hour. You can get back on your proposed new grade at 15 miles per hour.’

“A train starting out from Sudbury yard has only about 1,000 feet to go before it strikes the grade and consequently the assumption of 15 miles per hour, when it reaches the momentum grade proposed by Mr. Oliver, is much too high. I do not think this momentum grade would be of material assistance unless the train were running as Mr. Oliver assumes it, at a speed of 15 miles per hour.”

On consideration, it does not appear justifiable to direct the substitution of the momentum grade for the grade revision which is proposed.

In the written submissions as well as in the oral evidence and argument, much stress was laid upon the conditions under which the Canadian National crossing at the point in question was constructed, and various statements were put forward relating to what it was claimed was understood at the time. It is claimed, in summary, that the parties finally agreed as between themselves; that this was carried out by the exchange of correspondence; and that in issuing the order the Board recited the consent of the Canadian Pacific on terms. It is urged that if at all possible now by any reasonable proposal to maintain conditions as they are, this should be done.

The provisions of the order in regard to the laying of additional tracks have been referred to. It is contended, in substance, that the only rights possessed by the Canadian Pacific in respect of the crossing in question are, in so far as necessary rearrangements of the Canadian National are concerned, those which are specifically set out in the order. It would follow from this that there being no mention therein of grade revision, there would be no reserved right of the Canadian Pacific to call upon the Canadian National to contribute to the expense of the rearrangement of its overhead crossing, said rearrangement being a necessary outcome of Canadian Pacific grade revision.

The matter presented has features of difficulty and none of the authorities cited give facts absolutely identical with those involved in the present case.

At earlier times, in the carrying of one railway across another, the terms of such crossing and the expense attaching thereto were matters dealt with under agreement. Reference may be made in this connection to *The Yarmouth Case*,—Board's file 1517—cited in *Quebec Railway, Light & Power Co. Ltd., vs. C.P.R. Co., et al*, 28 *Can. Ry. Cas.*, 17, at p. 19. Now, a procedure exists whereby an order may be obtained from the regulative tribunal, without the necessity of such an agreement being entered into.

In the early days of the Board's history, it dealt with a situation where a railway company, which had the right, under its charter, to construct one or more sets of track on its right of way, had to face an application of another company to carry its tracks over the lines already in place. The company, which was senior, was held to be senior not only when its line is crossed by the line of the junior company, but, also, in respect of the crossing of any additional tracks subsequently laid by it; and the junior company had to bear the expense of making and protecting all such crossings as new crossings were laid by the senior company. *G.T.P. Ry. Co. vs. United Companies, Ltd. (St. Hyacinthe Case)*, 7 *Can. Ry. Cas.*, 294. It was thus held that a senior company was senior on its right of way in respect of crossings over its tracks, as and when such crossings were constructed.



A case which has features of analogy to what was involved herein is that of *London Railway Commission vs. Bell Telephone Co.*, 18 *Can. Ry. Cas.* 435. Two matters were involved in that decision—one, the rearrangement of wires of the Telephone Company where the point of crossing was on the property of the railway; the other, where the point of crossing was on the highway. It was held that where the wires of the Telephone Company crossing the line of the railway company, which has changed its system of operation from steam to electricity, require to be raised, the railway being senior in construction, the Telephone Company must bear the cost of raising its wires where the fee of the property crossed is in the railway company.

In *Canadian Northern Ry. Co. vs. C.P.R.*, 11 *Can. Ry. Cas.*, 432, the former railway applied to cross the Canadian Pacific Railway by overhead bridge. The question arose as to who should bear the expense of removing the spur belonging to the Canadian Pacific and relaying it under the bridge. It was held that as the Canadian Pacific was senior at the point of crossing, all the expense in connection with the removal of the spur was to be borne by the Canadian Northern.

In general, where there have been exceptions to the rule of seniority, they have been concerned with cases of railways crossing highways.

Reference has been made to the former procedure by agreement. There were before the Board in 1916 two applications—one, involving a wire crossing and the other, the carrying of a water pipe across the right of way of the railway. In the first of these—file 26930—the Maritime Telegraph and Telephone Company, in applying for an overhead crossing by its telephone wires over the tracks of the Dominion Atlantic Railway, took exception to a nominal charge which was set out in the agreement which the railway company desired the Telephone Company to sign. In the other—file 26915—the applicants, located at Nakusp, B.C., took exception to a charge which the railway desired applicant to pay as a condition precedent to carrying a water pipe through its right of way. *VI Judgments and Orders*, 109, at p. 111.

In dealing with these crossings, the former Chief Commissioner, Sir Henry Drayton, said that the usual rule was that property should not be taken or used under any enabling statute without payment of proper and sufficient compensation unless the Act itself, in clearest terms, provides to the contrary. It was stated: "The Act does not provide for the confiscation of the property of railways or others." It was recognized that, in general, compensation had not been sought by railway companies for the use of their property by such crossings. After stating that it had been the practice of the Board to allow such crossings without compensation, the railway not being in any way injured by them, it was stated. "The Order simply creates an easement which can be cancelled or varied should occasion from time to time require it."

The railway may, under its powers of compulsory taking, obtain right of way of a certain width. Fundamentally, this right of way is necessary in order that the railway may carry out the work for which it is chartered. In addition, subject to regulative legislation covering crossing by another railway, etc., it has the attributes of property in the hands of a private owner.

The Canadian Northern Ontario Railway, the predecessor of the Canadian National, obtained, under Order No. 17524, an easement to carry its lines over the tracks of the Canadian Pacific. Reference was made to the question of additional tracks, this being recognized as involving a burden on the part of the Canadian National in respect of necessary rearrangements. It is not necessary to follow this further; but it might be suggested that the statement in the order was, possibly, for greater caution. The decision rendered at an earlier date in the *St. Hyacinthe Crossing Case* may be considered as bearing on this matter.

Emphasis has been laid upon the agreement said to have been entered into. Discussions took place back and forth, but I am not satisfied that there was the unity of minds which is a prerequisite to a formal agreement. Whatever discussions may have taken place, no evidence was adduced showing that an agreement was entered into whereby, in return for consideration, the Canadian Pacific derogated from property rights it otherwise would have.

If the Canadian Pacific had, at the time the crossing was constructed, been engaged in or contemplating a work of grade revision, and if the latter had been known, would not these factors have been given weight; and would not the overhead structure of necessity have been adjusted to the clearances necessitated by the grades to which the work was being built, or which were in contemplation? Is there a change created by the question of grade revision being taken up some seventeen years after the Order No. 17524 issued?

The Canadian Northern Ontario, the predecessor in title of the Canadian National, desired to obtain a crossing over the tracks of the Canadian Pacific by means of an overhead structure. Before this work was constructed, it was open to the Canadian Pacific to make readjustment of its tracks on the right of way and to make readjustments of its grades, giving a lift of such amount as might seem proper to it. There being nothing overhead except the sky, there was nothing to interfere with an upward lift of the grade. Of course, under such conditions, the expense would be on the Canadian Pacific.

The Canadian National has obtained by sanction of law an easement across the Canadian Pacific property. The latter owns not only the lateral or surface rights of property; it owns, under the old definition, from the centre of the earth even up to the sky.

With a view to ascertaining whether the proposed grade revision was feasible, without necessitating a lift in the overhead structure, an investigation, on the ground, has recently been made by the Board's Chief Engineer who reports as follows: —

“I went to Sudbury yesterday, and in company with Mr. Hillman, Construction Engineer of the Canadian Pacific Railway, and Mr. Morrison, of the Canadian National Railway, looked into the proposition of starting the 0·95 grade on the Canadian Pacific Railway proposed new second track just west of the overhead crossing retaining the bridge at its present elevation.

“From the overhead bridge to the top of the grade, the distance is about 2·6 miles, and for the first mile, that is from Mile 80 to Mile 81, there would be no difficulty in depressing the proposed grade three feet, as this would place the new track at about the same elevation as the existing track. West of Mile 81 to the top of the grade at Mileage 82·6, the proposed second track is for the most part about one and one-half feet lower than the existing line, and it would be necessary to depress it 3·2 feet farther in order to obtain a 0·95 grade without disturbing the overhead bridge. Mr. Hillman stated that if it were the east-bound track which is down grade, that it was proposed to place at the lower elevation, he would have no objection at all; but to place the west-bound from four to five feet lower than the eastbound grade would subject the track to serious snow difficulties, and the company would very strongly oppose such a proposition. He stated that if both tracks were depressed to the same level, he would not object. This, of course, would involve very heavy expenditure, and I do not think the Canadian National Railways would care to undertake to pay the cost.

“On what is before me, I do not see how I can recommend that the proposed 0·95 grade be started west of the overhead crossing.”



Having in mind the reason why the right of way was acquired, it may be contended that in exercising such property rights, the Canadian Pacific should exercise them in a reasonable way. It does not appear that the exercise proposed in the present instance is unreasonable. It appears justifiable to permit the Canadian Pacific to exercise its rights in the ownership of property in connection with the improvement of its grade at the point in question, such improvement involving a lift in its tracks. This lift further involves a lift in the Canadian National overhead structure in order to give the standard clearance; and in so far as the lift of the Canadian National structure is necessary in order to give the full standard clearance, the expense of this should be on the Canadian National Railways.

April 17, 1930.

Commissioner Norris concurred.

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GENERAL ORDER No. 484

*In the matter of flagging equipment to be used to regulate movement of vehicular traffic over railways at highway crossings at which trainmen are required to protect during the time trains are uncoupled at such crossings.*

File No. 14502.3

MONDAY, the 7th day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon reading and considering the submissions filed, and for the purpose of making the practice uniform,—

*The Board orders:* That all railway companies subject to its jurisdiction adopt and use a hand signal by day and a signal by clear (white light) lantern at night to protect the movements of vehicles over railways at highway crossings at which trainmen are required to protect during the time trains are uncoupled at such crossings.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 44573

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

WEDNESDAY, the 9th day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

1. That the toll published in Supplement No. 15 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 15 to Tariff C.R.C. No. 812, approved herein, is 16 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44574

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 9th day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 7 to Tariff C.R.C. No. E-1226 and Tariff C.R.C. No. E-1243, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44581

*In the matter of the application of the Confederated Freight Association, Toronto, Ontario, hereinafter called the "Applicant," for ruling of the Board as to the correct rate on past shipments, reference being made to certain shipments moving in 1925, as well as the effective rate, said shipments consisting of rough stone shipped via the Canadian National Railways from Niagara Falls, Ontario, to Toronto, Ontario.*

File No. 31737.2

FRIDAY, the 11th day of April, A.D. 1930.

H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed on behalf of the applicant and the railway company, and upon the report and recommendation of the Chief Traffic Officer of the Board,—

*It is ordered and declared:*

That with respect to the traffic involved, moving during the year 1925, the carload rate legally in effect to Toronto via the Canadian National Railways was:—

On "rough stone" from Niagara Falls, Ont., 12 cents per 100 pounds as published in Canadian National Railways Tariff C.R.C. No. E-603.

On "rough building stone" from Queenston Quarry Company's siding, Ontario (near Niagara Falls), from June 3 to December 31, 1925, inclusive, 8 cents per 100 pounds as published in Canadian National Railways Tariff C.R.C. Nos. E-932 and E-996.

That the present rates are contained in Canadian National Railways Tariff C.R.C. No. E-1153 (and effective supplements thereto).

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER NO. 44591

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 15th Day of April, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board Orders:* That the tolls published in tariffs filed by the Canadian National Railways, under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved as follows, namely:—

- Supplement 7 to Tariff C.R.C. No. E-1226.
- Supplement 20 to Tariff C.R.C. No. E-1234.
- Supplement 28 to Tariff C.R.C. No. E-1235.
- Supplement 9 to Tariff C.R.C. No. E-1236.
- Supplement 10 to Tariff C.R.C. No. E-1247.
- Tariff C.R.C. No. E-1543.

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER NO. 44592

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13.

TUESDAY, the 15th Day of April, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board Orders:*

1. That the tolls published from points on the Dominion Atlantic Railway by the Canadian National Railways under power of attorney, in item 80-E of Supplement No. 9 to Tariff C.R.C. No. E-1258 and item 383½ of Supplement No. 12 to Tariff C.R.C. No. E-1259 under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act; the Dominion Atlantic Railway proportion to be reported as follows:—

From	Cents per 100 Pounds
Port William, N.S. . . . . . }	
Waterville, N.S. . . . . . }	16.8
Berwick, N.S. . . . . . }	
Sheffield Mills, N.S. . . . . . }	
Aylesford, N.S. . . . . . }	
Kingston, N.S. . . . . . }	18
Lakeville, N.S. . . . . . }	
Lawrencetown, N.S. . . . . . }	19

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 80-E of Tariff C.R.C. No. E-1258 and item 383½ of Supplement No. 12 to Tariff C.R.C. No. E-1259, approved herein, are as follows:—

From	Cents per 100 Pounds
Port William, N.S. . . . . . }	
Waterville, N.S. . . . . . }	21
Berwick, N.S. . . . . . }	
Sheffield Mills, N.S. . . . . . }	
Aylesford, N.S. . . . . . }	
Kingston, N.S. . . . . . }	22.5
Lakeville, N.S. . . . . . }	
Lawrencetown, N.S. . . . . . }	23.5

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER NO. 44616

*In the matter of the complaints of the Reliance Grain Company, Limited, Port Arthur, Ontario; Traffic Department Vancouver Board of Trade, Vancouver, British Columbia; Vancouver Grain Exchange, Vancouver, British Columbia; Calgary Board of Trade, Calgary, Alberta; McCabe Brothers Grain Company, Limited, Winnipeg, Manitoba; National Elevator Company, Limited, Winnipeg, Manitoba; Western Canada Flour Mills, Calgary, Alberta; Canadian Manufacturers Association, Toronto, Ontario; Medicine Hat Chamber of Commerce, Medicine Hat, Alberta; and Moose Jaw Board of Trade, Moose Jaw, Saskatchewan, against regulation published in tariffs of the Canadian Pacific Railway (Lines Port Arthur, Ontario, and West thereof) and the Canadian National Railways (Lines Port Arthur, Armstrong, Ontario, and West thereof) covering allowances for temporary doors furnished cars for shipments of bulk grain, coal or livestock, to be effective April 25, 1930, providing that where grain doors are furnished by the railway for handling in switching service only, a charge of two dollars per car will be made, such doors to remain the property of the railway.*

File No. 4106·41.

WEDNESDAY, the 23rd Day of April, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon consideration of the submissions filed by the complainants,—

*The Board Orders:* That the tariff provision reading:—

*“Grain Doors for Shipments handled in Switching Service.”*

*“Where grain doors are furnished by the railway for shipments handled in switching service only, a charge of two dollars (\$2) per car will be made, such doors to remain the property of the railway.”*

as contained in Item 25-A, Supplements Nos. 2 and 3 to Canadian National Railways Tariff C.R.C. No. W-650, and item 5-A in Supplement No. 2 to Canadian Pacific Railway Tariff C.R.C. No. W-2927, be, and it is hereby, suspended pending hearing or further order of the Board.

H. A. McKEOWN,  
*Chief Commissioner.*

## CIRCULAR No. 228

*File 25434.5, in re protection of level crossings on back-up movements.*

I am directed by the Board to refer you to its General Order No. 483, dated March 5th, 1930, and to ask the Railway Companies subject to the Board's jurisdiction to show cause why, in order to remove any doubt or ambiguity as to where the end of the circuit comes, arrangements should not be made to establish a definite mark. For example, a small finger-board with the words "end of block" or "end of circuit".

By Order of the Board,

A. D. CARTWRIGHT,  
*Secretary.*

April 3rd, 1930.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
BOARD OF RAILWAY COMMISSIONERS, FOR THE  
MONTH OF FEBRUARY, 1930

Railway accidents.....143, involving 27 persons killed and 122 injured  
Railway accidents at highway crossings..... 13, involving 6 persons killed and 11 injured

	Killed	Injured
Passengers.. . . . .	2	12
Employees.. . . . .	11	92
Others.. . . . .	20	29
	<u>33</u>	<u>133</u>

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF NOVA SCOTIA

Accidents

1 Automobile—Licence N.S. D-307.

PROVINCE OF QUEBEC

1 Automobile—Defective brakes. Licence Vermont 976.

PROVINCE OF ONTARIO

- 1 Automobile—Ran into side of train. Licence Ont. 197-705.  
2 Automobile—Carelessness of driver. Ontario licences 3498X, 247-918.  
1 Automobile—Defective brakes. Ontario licence C-3575.  
1 Automobile—Man. licence 28058.  
2 Pedestrian.

PROVINCE OF MANITOBA

1 Sleigh—Carelessness of driver.

PROVINCE OF ALBERTA

- 1 Automobile—Carelessness of driver. Licence Alberta 90653.  
1 Automobile—Defective brakes. Licence Alberta 68-967.  
1 Wagon—Carelessness of driver.

Of the 13 accidents at highway crossings, 1 occurred at a protected crossing, and 12 at unprotected crossings. Seven of the accidents occurred during daylight hours and six during the night.

OTTAWA, April 23, 1930.







The Board of  
**Railway Commissioners for Canada**

Judgments, Orders, Regulations, and Rulings

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Ottawa, May 15, 1930

No. 5

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ORDER No. 44603

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Hudson Bay Junction Southerly Branch from the junction with the Tisdale Subdivision of the Canadian Northern Railway Company at mileage 1.46, near Hudson Bay Junction, in the Province of Saskatchewan, to the junction with the Sturgis-Peesane Branch of the Applicant Company at Reserve, a distance of 29.02 miles; also the west leg of wye at the said junction with the Tisdale Subdivision, 0.21 mile in length; a total length of 29.23 miles.*

File No. 36337.3

WEDNESDAY, the 16th day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Hudson Bay Junction Southerly Branch from the junction with the Tisdale Subdivision of the Canadian Northern Railway Company at mileage 1.46, near Hudson Bay Junction, in the province of Saskatchewan, to the junction with the Sturgis-Peesane Branch of the applicant company at Reserve, a distance of 29.02 miles; and the west leg of wye at the said junction with the Tisdale Subdivision, 0.21 mile in length; a total length of 29.23 miles.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44629

*In the matter of the application of the City of Oshawa, Province of Ontario, for an Order requiring the highway known as Simcoe Street, Oshawa, and the tracks and railway of the Oshawa Railway Company to be carried under the tracks and railway of the Canadian National Railways, by means of a subway.*

File No. 228

WEDNESDAY, the 16th day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*THOMAS VIEN, K.C., *Deputy Chief Commissioner.*C. LAWRENCE, *Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, January 21, 1930, in the presence of counsel for and representatives of the city of Oshawa and the Canadian National Railways, and what was alleged; and upon the report and recommendation of its Chief Engineer,—

*The Board orders:*

1. That the city of Oshawa and the Canadian National Railways be, and they are hereby, authorized to construct a subway under the tracks of the Canadian National Railways, approximately as shown on the plan dated May 15, 1928, the said subway to have a width of sixty feet and an overhead clearance of seventeen feet, detail plans to be submitted for the approval of an engineer of the Board.

2. That forty per cent of the cost of constructing the said subway (not exceeding \$100,000) be paid out of the Railway Grade Crossing Fund; that the cost of the additional width of two feet and the additional depth of three feet in the subway, the additional cost of drainage, necessitated by the additional depth of three feet, the cost of paving the electric railway track strip (but not including lifting and relaying the track), the cost of paving the extra strip of two feet, necessitated by the extra width of the subway, the cost of additional paving on the station approach, necessitated by the additional depth in the subway, be all borne and paid by the Canadian National Railways; that the cost of paving the remainder of the subway be borne and paid by the city of Oshawa; and that the remainder of the cost of the subway, as well as the cost of maintenance, be borne and paid forty-three per cent by the city of Oshawa and fifty-seven per cent by the Canadian National Railways; the Canadian National Railways to maintain the paving on the track strip, and the city of Oshawa the remainder of the paving on Simcoe street.

3. That the Canadian National Railways be, and they are hereby, authorized to divert Albert street into the said subway, detail plan to be filed for the approval of an engineer of the Board; and, upon completion of the subway on Simcoe street, to close Albert street within the right of way limits; forty per cent of the cost to be paid out of the Railway Grade Crossing Fund and the remainder by the Canadian National Railways; the paving of the station approach to be maintained forty-three per cent by the city of Oshawa and fifty-seven per cent by the Canadian National Railways.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 44617

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

TUESDAY, the 22nd day of April, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published in item 16 of Supplement No. 33 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 16 of Supplement No. 33 to Tariff C.R.C. No. 813 is 34½ cents per 100 pounds.

H. A. McKEOWN,  
 \_\_\_\_\_  
*Chief Commissioner.*

## ORDER No. 44618

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 22nd day of April, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 30 to Tariff C.R.C. No. E-1237, filed by the Canadian National Railways, under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
 \_\_\_\_\_  
*Chief Commissioner.*

## ORDER No. 44615

*In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file a supplement to their Tariff C.R.C. No. W-619, on less than statutory notice, to correct an error.*

File No. 27612.46

WEDNESDAY, the 23rd day of April, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an error has been made in publishing proportional rates on canned goods, in carloads, from international boundary, Ontario (north of Ranier, Minnesota), to Calgary and Edmonton, Alberta, in item 627-A in Supplement No. 36 to Tariff C.R.C. No. W-619,—

*The Board orders:* That the applicants be, and they are hereby, permitted to publish and file on one day's notice, a further supplement to their Tariff C.R.C. No. W-619, establishing proper rates.

H. A. McKEOWN,  
 \_\_\_\_\_  
*Chief Commissioner.*



## ORDER No. 44645

*In the matter of the application of the Lake Erie and Northern Railway Company, hereinafter called the "Applicant Company," under Section 314 of the Railway Act, for approval of By-law No. 41, dated December 6, 1929, authorizing the General Manager, the General Freight and Passenger Agent, and the Assistant General Freight and Passenger Agent, from time to time to prepare and issue Tariffs of the Tolls to be charged for the carriage of Freight and Passenger Traffic upon the railways owned or operated by the Applicant Company or any portion thereof.*

File No. 18034.109

WEDNESDAY, the 23rd day of April, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

*The Board orders:* That the said by-law No. 41, dated December 6, 1929, be, and it is hereby approved; and that Order No. 24596, dated December 23, 1915, made herein, be rescinded.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44646

*In the matter of the application of the Grand River Railway Company, hereinafter called the "Applicant Company," under Section 314 of the Railway Act, for approval of By-law No. 9, dated December 6, 1929, authorizing the General Manager, the General Freight and Passenger Agent, and the Assistant General Freight and Passenger Agent, from time to time to prepare and issue Tariffs of the Tolls to be charged for the carriage of Freight and Passenger Traffic upon the railway owned or operated by the Applicant Company or any portion thereof.*

File No. 28710.

WEDNESDAY, the 23rd day of April, A D., 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of its Chief Traffic Officer,—

*The Board orders:* That the said by-law No. 9, dated December 6, 1929, be, and it is hereby, approved; and that Order No. 27317, dated June 18, 1918, made herein, be rescinded.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44639

*In the matter of the Order of the Board No. 43863, dated November 22, 1929, authorizing the Canadian Pacific Railway Company to construct the tracks of its Lanigan to Prince Albert Branch at grade across the tracks of the Canadian National Railways, in the Southwest Quarter of Section 19, Township 42, Range 24, West 2nd Meridian, in the Province of Saskatchewan, at mileage 60.19 of the said Branch; that the Canadian Pacific Railway Company insert a diamond in the track of the Canadian National Railways at the said crossing, such crossing to be protected by an interlocking plant, the question of the apportionment of the cost of providing, maintaining, and operating such interlocking plant to be reserved for further consideration.*

File No. 36655.13

FRIDAY, the 25th day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
 C. LAWRENCE, *Commissioner.*  
 Hon. T. C. NORRIS, *Commissioner.*  
 J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, February 6, 1930, in the presence of counsel for the Canadian Pacific and Canadian National Railway Companies, and what was alleged,—

*The Board orders:* That the cost of inserting the diamond and providing the interlocking plant be borne and paid by the Canadian Pacific Railway Company; such automatic interlocking plant to have operative home and distant signals; detail plan showing the layout to be filed for the approval of an Engineer of the Board.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 44641

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 252 of the Railway Act, for authority to construct its second track across the tracks of the Canadian National Railways by means of an undercrossing in Lot 6, Concession 4, Township of McKim, District of Sudbury, and Province of Ontario, at mileage 79.95 on its Cartier Subdivision, as shown on the plan and profile No. 16422, dated Montreal, September 7, 1929, on file with the Board under file No. 9188.106.*

SATURDAY, the 26th day of April, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
 Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 11, 1930, in the presence of counsel for and representatives of the Canadian Pacific and Canadian National Railway Companies, and what was alleged, and upon the report and recommendation of its Chief Engineer,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to construct its second track across the tracks of the Canadian National Railways by means of an undercrossing in lot 6, concession 4, township of

McKim, district of Sudbury, and province of Ontario, at mileage 79.95 on its Cartier Subdivision, as shown on the said plan and profile on file with the Board under file No. 9188.106.

2. That the Canadian National Railways raise their track a sufficient distance to provide standard clearance of 22 feet 6 inches between the base of rail of the Canadian Pacific Railway Company's tracks, and the low steel of the bridge of the Canadian National Railways; and that the cost of raising the said track to be borne by the Canadian National Railways.

S. J. McLEAN,  
Assistant Chief Commissioner.

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ORDER No. 44656

*In the matter of the application of the Canadian National Railways and the Canadian Pacific Railway Company for an Order rescinding Order No. 22237, dated July 18, 1914, and Order No. 33938, dated July 27, 1923, which required publication of lumber reconsigning tariffs applicable on lumber and forest products from Ohio and Mississippi River crossings:*

File No. 1700.331

MONDAY, the 28th day of April, A.D. 1930.

Hon. H. A. McKEOWN, K.C., Chief Commissioner.  
S. J. McLEAN, Assistant Chief Commissioner.

Upon its appearing that through rates have now been published from the United States points of origin to Canadian destinations, which have the effect of making no longer necessary the tariffs directed under the said orders; and upon the report and recommendation of its Chief Traffic Officer, the complainants under the said orders having been advised of this application and having made no objection thereto,—

*The Board orders:* That Order No. 22237, dated July 18, 1914, and Order No. 33938, dated July 27, 1923, be, and they are hereby, rescinded.

H. A. McKEOWN,  
Chief Commissioner.

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ORDER No. 44667

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.2

THURSDAY, the 1st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., Chief Commissioner.  
S. J. McLEAN, Asst. Chief Commissioner.

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement No. 21 to Tariff C.R.C. No. E-1234.  
Supplement No. 24 to Tariff C.R.C. No. E-1244.  
Supplement No. 25 to Tariff C.R.C. No. E-1246.  
Supplement No. 15 to Tariff C.R.C. No. E-1249.  
Supplement No. 17 to Tariff C.R.C. No. E-1302.  
Tariff C.R.C. No. E-1557.

H. A. McKEOWN,  
Chief Commissioner.



## ORDER No. 44668

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.12

THURSDAY, the 1st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published on silica gravel in item 4-A and upon hollow fire-proofing brick, drain and building tile in item 15 of Supplement No. 15 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said items 4-A and 15 of Supplement No. 15 to Tariff C.R.C. No. E-4310, approved herein, are as follows:—

On silica gravel, Group "C" rates as published in Canadian Pacific Tariff C.R.C. No. E-4221.

On fire-proofing brick, drain and building tile, Group "J" rates as published in Canadian Pacific Tariff C.R.C. No. E-4221.

H. A. McKEOWN,

*Chief Commissioner.*

## ORDER No. 44669

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.12

THURSDAY, the 1st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published on crushed stone in bulk in item 14-A of Supplement No. 16 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 14-A of Supplement No. 16 to Tariff C.R.C. No. E-4310, approved herein, are Scale M rates as shown in Canadian Pacific Tariff C.R.C. No. E-4221.

H. A. McKEOWN,

*Chief Commissioner.*

## ORDER No. 44670

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.12

THURSDAY, the 1st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item 276 of Supplement No. 26 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 276 of Supplement No. 26 to Tariff C.R.C. No. E-4312, approved herein, are the 10th Class rates in effect prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44671

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.12

THURSDAY, the 1st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item 25, 270-E, and 570 of Supplement No. 24 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said items 25, 270-E, and 570 of Supplement No. 24 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

On sulphate of ammonia, carloads, column "N" rates as published in Supplement No. 17 to Canadian Pacific Tariff C.R.C. No. E-4422.

On sulphate of ammonia, less than carloads, the 4th Class rates in effect prior to July 1, 1927.

On phosphate rock, not acidulated, column "B" rates as published in Canadian Pacific Tariff C.R.C. No. E-4250.

On newsprint skids or platforms, the 4th Class rate in effect prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44672

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.15

THURSDAY, the 1st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in items 250-C, 260-D, 278, and 280 of Supplement No. 22 to Tariff C.R.C. No. 157, filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said items 250-C, 260-D, 278, and 280 of Supplement No. 22 to Tariff C.R.C. No. 157, approved herein, are as follows:—

On phosphate rock, not acidulated, the mileage rates published in item 250-A, of Supplement No. 5 to Fredericton and Grand Lake Coal and Railway Tariff C.R.C. No. 152.

On fire-proofing brick, drain, and building tile, column "J" rates as published in Canadian Pacific Tariff C.R.C. No. E-4221.

On silk cloth, less than carloads, the first-class rates or multiples thereof in effect prior to July 1, 1927.

On skids (newsprint paper or woodpulp) the 4th Class rates in effect prior to July 1, 1927.

H. A. McKEOWN,

*Chief Commissioner.*

## ORDER No. 44679

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of By-law No. 16, passed April 28, 1930, amending the Applicant Company's By-law No. 3:*

File No. 4277.1

MONDAY, the 5th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

*The Board orders:* That the said By-law No. 16 of the applicant company, dated April 28, 1930, further amending its By-law No. 3 by deleting therefrom the words "Asst. General Freight Agent, Winnipeg, Man.," and substituting therefor the words "Chief of Tariff Bureau, Winnipeg, Man.," be, and it is hereby, approved.

H. A. McKEOWN,

*Chief Commissioner.*







# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, June 1, 1930

No. 6

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*Complaints of Westfield Country Club, Westfield Centre, N.B.; Epworth Park Outing Association, Saint John, N.B.; Pamdenec Outing Association, Saint John, N.B.; Ketspec, Belmont, Morna Outing Association, Saint John, N.B.; and The Grand Bay Outing Association, Grand Bay, N.B., re commutation rates on the Canadian Pacific Railway out of Saint John, N.B.*

File 7287.31

### JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The Canadian Pacific Railway Company's line concerned originally stopped at West Saint John. The traffic reached Saint John by means of a ferry, and an additional toll was paid therefor. The Saint John Bridge and Extension Railway Company was incorporated by chapter 44 of the Statutes of New Brunswick, 1881. Section 39 of this legislation provided—

"Subject to the provisions of this Act, a toll is hereby granted and established for the sole use and benefit of the company upon all passengers and property of all descriptions, which may be conveyed or transported by them upon such road, at such rate as may be agreed upon, and established from time to time by the directors."

The bridge was completed in 1886. Control of the Bridge Company was acquired by the Canadian Pacific Railway Company in 1905. The bridge is leased by the bridge company to the Canadian Pacific Railway Company which owns all the capital stock of the bridge company. It is submitted by the railway that the Board is entitled to take into consideration the fact that the bridge company is a separate corporation; and it is pointed out that it has always been operated separately and that the accounting has been kept separate.

It is further represented that the bridge was built for the specific purpose of bringing Saint John city in direct touch with the line of the Canadian Pacific Railway; it occupies a different position from other bridges; it takes the place of the old arrangement under which everything had to be ferried across; the Canadian Pacific has no line beyond Saint John; it is different from bridges

which are simply an integral part of the system and not a dividing line between the city on one side and the territory which is reached on the other.

In 1921, the old bridge was scrapped, and the bridge now in place was constructed at an expense in excess of \$900,000. The total mileage between Saint John, N.B., and Fairville, N.B., including the bridge, is 2.2 miles. The bridge itself is 1,260 feet—a length of approximately one-quarter of a mile.

The tariff regulations of the railway provide that in computing passenger mileage to or from Saint John, N.B., and any point east of Megantic, P.Q., four miles one way and eight miles for round trip must be added to or from Saint John, N.B., to cover the bridge tolls. The bridge toll is 15 cents and is thus being computed on the constructive mileage of 4 miles.

It is set out by the railway that because of competitive conditions the average toll collected is less. It is also stated that the receipts from the toll charges fall short of the operating costs of interest and maintenance.

It is represented that the annual interest charge on the bridge investment is approximately \$45,000; maintenance is set out at \$6,000 per annum. It is not claimed that operation costs more on the bridge mileage than on any similar length of rail mileage used in passenger service.

The number of suburban passengers over the bridge in 1928 was 72,353 as compared with 159,549 in 1924—a decrease of 54 per cent. The competition of buses and automobiles was referred to as having contributed to cutting down the suburban traffic.

The following statement shows the commutation rate basis on constructive mileage and on actual mileage:—

Between Saint John, N.B. and	Const. miles	Published fares		Actual miles	Published fares	
		10 Tr.	50 Tr.		10 Tr.	50 Tr.
		\$ cts.	\$ cts.		\$ cts.	\$ cts.
Fairville, N.B.	7	1 25	*3 75	3	0 75	*3 75
South Bay, N.B.	9	2 25	3 80	5	1 25	*3 75
Acamac, N.B.	10	2 50	4 25	6	1 50	*3 75
Ketepec, N.B.	11	2 75	4 65	7	1 75	*3 75
Morna, N.B.	12	3 00	5 10	8	2 00	*3 75
Martino, N.B.	13	3 25	5 50	9	2 25	3 80
Grand Bay, N.B.	14	3 50	5 95	10	2 50	4 25
Pamdene, N.B.	15	3 75	6 35	11	2 75	4 65
Epworth Park, N.B.	16	4 00	6 80	12	3 00	5 10
Ingleside, N.B.	16	4 00	6 80	12	3 00	5 10
Omonette, N.B.	17	4 25	7 20	13	3 25	5 50
Hillandale, N.B.	18	4 50	7 65	14	3 50	5 95
Westfield Beach, N.B.	18	4 50	7 65	14	3 50	5 95
Lingley, N.B.	19	4 75	8 05	15	3 75	6 35
Sagwa, N.B.	21	5 25	8 90	17	4 25	7 20
Nerepis, N.B.	23	5 75	9 75	19	4 75	8 05
Blagdon, N.B.	24	6 00	10 20	20	5 00	8 50
Eagle Rock, N.B.	26	6 50	11 05	22	5 50	9 35
Bayard, N.B.	27	6 75	11 45	23	5 75	9 75
Welsford, N.B.	28	7 00	11 90	24	6 00	10 20

\*Minimum.

On April 1, 1920, decision was rendered in *Commutation Rates Case*. This was implemented by Order No. 29152, of April 1, 1920, which provided—

“That the said railway companies be, and they are hereby permitted to file new tariffs of fares, for commutation passenger traffic, applicable between the points included in the now existing tariffs of commutation fares, as follows, namely:—

“(a) Fifty-trip tickets, good for 30 days, on the basis of 8½ mills per mile of travel, subject to a minimum charge per ride of 7½ cents.



“(b) Forty-trip tickets (scholars’ tickets), good for 30 days, on the basis of  $4\frac{1}{4}$  mills per mile of travel, subject to a minimum charge per ride of  $7\frac{1}{2}$  cents;

“(c) Ten-trip tickets, good for three months, on the basis of 2.5 cents per mile of travel, subject to a minimum charge per ride of  $7\frac{1}{2}$  cents;

“subject to the provisions of section 327 of the Railway Act, 1920.”

The complaints dealt with in this case were concerned with traffic out of Montreal, Toronto, Bridgeburg and Ottawa. In considering the rates, there was not taken into consideration the question of whether interest charges bulked more largely on one mile of railway track than it did on another adjacent mile of railway track, nor were differences in maintenance held to justify difference in commutation rate basis as between one mile of railway track and another adjacent mile of railway track. The railway lines concerned differed in costs and operating conditions, but these differences were not considered by the Board as constituting determining factors.

As pointed out in the judgment—*10 Judgments and Orders, 35, at p. 37*,—

“Commutation rates have been in existence for a considerable period of years; they were introduced by the railways, primarily, to stimulate traffic between centres of population and suburban areas, with the object in view of inducing, by commuting rates, on a low scale, people resident in large centres to locate within easy distance outside of the city, and use the railway each working day for the purpose of going to and from their business. It was never contemplated by the railways that this traffic could be placed upon a profitable basis; i.e., that the direct returns would be a source of profit, but it was expected that the indirect results would so stimulate other standard passenger traffic and increase freight traffic that the inauguration of commuters’ rates would thereby, indirectly, if not directly, be a source of profit to the railways.”

The Board, in its judgment, allowed an increase on the commutation rate basis, said increase being allowed on account of general increase of costs.

In the judgment in question, the commutation traffic passing over the Victoria bridge was involved. While the Canadian National has, under Order in Council, permission to charge tolls over the bridge, the commutation fares from Montreal to stations St. Lambert and beyond are figured on the actual mileage involved, nothing being added for the Victoria bridge. The Canadian Pacific Railway bridge at Highlands, 3,660 feet in length, was constructed in 1886 at an approximate cost of \$5,000,000. New spans and piers were built in 1912. No constructive mileage factor is charged as part of the rate on commutation traffic moving over this bridge.

The commutation rate basis which was found justifiable by the judgment is the basis applied in the case of movements over the bridge at Saint John, N.B. The differing factor is the bringing in of constructive mileage. As I read the judgment in the *Commutation Rate Case*, the intention was to lay down a general basis of rates in Eastern Canada. This commutation rate basis has a definite relationship to the standard passenger rate of 3.45 cents per mile applicable in the territory east of the Calgary and Edmonton line. Subject to the significance of the constructive mileage, the owners of the bridge at Saint John accepted this basis as being applicable. The manifest intention of the judgment was to have a general scheme which, in the territory to which it was applicable, would not consider differences as between one mile and another of ordinary track, taking into consideration curvature and grades; differences between one mile of track and another on which a bridge might be located; or differences between one mile of track and another on which a tunnel might be

located. In brief, it was a general scheme which did not go into the particular costs in the territory in which it was applicable; and I am, therefore, of the opinion that in the present instance the provisions in respect of commutation rates should apply out of Saint John, N.B., without introducing the factor of constructive mileage.

May 21, 1930.

Commissioner Lawrence concurred.

*Application of the town of Girouxville, Alberta, the Board of Trade and several residents of Girouxville, for the establishment of a siding at the new location of the town site, at mileage 279.6, on the branch line of the E.D. & B.C. Railway Company, Smoky Subdivision, running between Winagami and Spirit River, and for certain other accommodation and train service at that point.*

File 27262.3.

### JUDGMENT

VIEN, DEPUTY-CHIEF COMMISSIONER:

The applicants allege that, a few years ago, the E.D. and B.C. Railway Company built a station called Girouxville at mile 277.6 of its Smoky subdivision line, then under construction, in the expectation that this point would become an important centre; that the centre of the settlement, however, is now two miles further west (mile 279.6) at a point called New Girouxville, where have been established a school district and a \$7,000 school, a parish and church; that New Girouxville is the centre of communication and distribution of the three townships Nos. 77, 78 and 79 (22-W. 5), on which more than 500 homesteaders have taken and broken some 9,000 acres of land during the years 1928-29; that the post-office has been moved from Old Girouxville to New Girouxville, where there are already three stores, a licensed hotel, a bake shop, a garage, a meat shop and all those facilities that make up a village in the ordinary sense of the word, except a railway station; that it is a great inconvenience to the people to have to walk or drive, and to haul by team or truck their mails and freight to and from Old Girouxville, two miles or more away from their place of abode.

The petitioners therefore request that an Order be made directing the Railway Company to construct a shelter-station and freight shed, and to stop its trains and deliver mails, express and freight at New Girouxville.

This application is opposed by the railway company and landowners of Old Girouxville. Mr. Walker, on behalf of the Northern Alberta Railways Company, successor in title of the E.D. and B.C. Railway Company, urged that the practice of the railway company and of the Board has been, heretofore, except in exceptional circumstances, to locate stations not less than four and one half miles apart; that, at Old Girouxville, there were a two-car combination loading platform, a stock yard, a combination station and freight shed with wooden platform, a portable section and tool house, and two standard grain elevators; that these facilities have been established in 1921 or 1922, at a cost of approximately \$1,000; that freight earnings have grown from \$8,870.74 in 1927 to \$21,851.67 in 1929, and grain shipments, from 6,800 bushels in 1927 to 130,726 bushels for the six months ending December 31, 1929; that these figures show a large increase in traffic, which will soon justify the appointment of an agent; that it is highly inadvisable either to move this station to the new town site, at an expense of \$4,800 or to erect a new one at such a short distance further west.



Mr. Woods, on behalf of certain landowners in the territory tributary to the present station, submitted that the creation of station facilities at the new town site would be the death-blow of Old Girouxville, one of the original points on the railway where business was growing satisfactorily; that New Girouxville had developed during the last year only, and that homesteaders were just clearing the ground and breaking the land, and had not yet produced grain in any substantial quantity. He admitted however that the school and the church had been established at the new town site, where they were on high ground and more centrally located to serve the surrounding country and a certain territory further west, and that buildings had been put on skids during the year 1929, and drawn to the new town site, where stores and other buildings had been erected recently.

Mr. McBride, on behalf of the applicants, replied that Old Girouxville had received its death-blow when Falher, a locality two miles south thereof, had gone ahead and prospered to such an extent that the railway company, of its own volition, had built there a station and appointed an agent and telegraph operator. This necessitated choosing a point further west for the centre of the new school and church districts, and New Girouxville was selected.

The evidence clearly shews that the new town site, with its church, school, post office, hotel, stores and several other buildings, is and will remain the centre of a large and rapidly growing district and of its activities. It is obvious that a railway station should be established near the communal centre, so as to be useful to the greatest possible number, and to avoid the unnecessary handling of mails, express and freight, and the unnecessary travelling to and from the station. It is also highly desirable that the permanent station site should be chosen in the early stage of the establishment of a settlement, with a view to facilitating the proper localization of grain elevators and other essential facilities.

In my opinion, the application should be granted and the Northern Alberta Railways Company directed to establish on its Smoky Subdivision, at mile 279.6, a combination shelter, station and freight shed, a siding and loading platform, and to stop its passenger, mixed and freight trains at this point, and to appoint a caretaker to keep the station clean, heated and lighted, and to take care of L.C.L. shipments.

May 21, 1930.

Commissioner Stoneman concurred.

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ORDER No. 44762

*In the matter of the application of the Town of Girouxville, Alberta, the Board of Trade and residents of Girouxville, for an Order directing the Northern Alberta Railways Company to construct a siding at New Girouxville, Alberta, mileage 279.6 Smoky Subdivision, and to provide certain other accommodation and train service at that point.*

File No. 27262-3.

THURSDAY, the 22nd day of May, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, March 17, 1930, in the presence of Counsel for and representatives of Girouxville Board of Trade, United Grain Growers, Limited, the Alberta Pacific Grain



Company, the Town of Girouxville, and the Northern Alberta Railways Company, and what was alleged,—

*The Board Orders:* That, within ninety days from the date of this order, the Northern Alberta Railways Company be, and it is hereby, directed to construct on its Smoky Subdivision, at mileage 279·6, a combination shelter, station, and freight shed, a siding and loading platform, and to appoint a caretaker to keep the station clean, heated, and lighted, and to take care of L.C.L. shipments.

2. That the Northern Alberta Railways Company stop its passenger, mixed, and freight trains at New Girouxville, Alberta.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

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ORDER No. 44690

*In the matter of the application of the Fredericton and Grand Lake Coal and Railway Company, hereinafter called the "Applicant Company," for permission to reissue, effective May 17, 1930, on five days' notice, their Tariff C.R.C. No. 187.*

File No. 27612.47

THURSDAY, the 8th day of May, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

Upon its appearing that in publishing the applicant company's Tariff C.R.C. No. 187, applying on building brick and hollow building tile from Chipman, New Brunswick, to points in the state of Maine, a printer's typographical error was made and the rate published to Houlton, Maine, was shown as 12 cents instead of 14 cents per 100 pounds; and the Interstate Commerce Commission having given special permission to reissue said tariff to correct the error, effective May 17, 1930, on five days' notice,—

*The Board orders:* That the applicant company be, and it is hereby, permitted to reissue, effective May 17, 1930, on five days' notice, its Tariff C.R.C. No. 187, establishing proper rates.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 44694

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.14

THURSDAY, the 8th day of May, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:*

1. That the toll published in Tariff C.R.C. No. 670, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Tariff C.R.C. No. 670, approved herein, is 2 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 44695

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

THURSDAY, the 8th day of May, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways, under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement No. 12 to Tariff C.R.C. E-1233.

Supplement No. 10 to Tariff C.R.C. E-1238.

Supplement No. 18 to Tariff C.R.C. E-1243.

Supplement No. 12 to Tariff C.R.C. E-1253.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 44721

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

THURSDAY, the 15th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 852, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 852, approved herein, are published in Dominion Atlantic Railway Tariff C.R.C. No. 688.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44722

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.14

THURSDAY, the 15th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the toll published in Tariff C.R.C. No. 672, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of Section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Tariff C.R.C. No. 672, approved herein, is 4 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44723

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

THURSDAY, the 15th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published on sulphate of ammonia in Supplement No. 9 to Tariff C.R.C. No. 815, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 9 to Tariff C.R.C. No. 815, approved herein, are the fourth class rates in effect prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44724

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

THURSDAY, the 15th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published in item 131 of Supplement No. 34 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.



2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 131 of Supplement No. 34 to Tariff C.R.C. No. 813, approved herein, are the first, second, and fourth class rates in effect prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 44725

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.14

THURSDAY, the 15th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 673, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 673, approved herein, are as follows:—

Miles	Rates in Cents per 100 Pounds
5 .....	2½
25 .....	4
40 .....	4½
50 .....	5
85 .....	5½

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 44726

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.14

THURSDAY, the 15th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 671, filed by the Temiscouata Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.



ORDER No. 44749

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.13

TUESDAY, the 20th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item 5-A of Supplement No. 10 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of that published in the said item 5-A of Supplement No. 10 to Tariff C.R.C. No. 811, approved herein, are as follows:—

From	to	Rates in cents per hundred pounds
Avonport, N.S. . . . .	Bedford, N.S. Halifax, N.S. Rockingham, N.S. Windsor Junction, N.S. }	} 6½

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 44750

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.2

TUESDAY, the 20th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 16 to Tariff C.R.C. No. E-1230 and in Supplement No. 1 to Tariff C.R.C. No. E-1543, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
BOARD OF RAILWAY COMMISSIONERS, FOR THE  
MONTH OF MARCH, 1930

Railway accidents . . . . .	121, involving 14 persons killed and 127 injured
Railway accidents at highway crossings . . . . .	18, involving 2 persons killed and 19 injured
	Killed      Injured
Passengers . . . . .	..      26
Employees . . . . .	4      89
Others . . . . .	12      31
	16      146



## DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

## PROVINCE OF QUEBEC

## Accidents

- 1 Pedestrian.

## PROVINCE OF ONTARIO

- 7 Automobile—Ran into side of train. Licences Ont. H-6149; Ont. L-4403; Ont. X-3192; Ont. C-42652; Ont. C-542; Ont. X-76; Ont. Y-2948.  
 3 Automobile—Carelessness of driver. Ontario Licences D0-857; 27-9310; E-9636.  
 1 Pedestrian.

## PROVINCE OF MANITOBA

- 1 Automobile—Carelessness of driver. Licence Man. 3797.  
 1 Sleigh—Horse became frightened and bolted.  
 1 Sleigh.

## PROVINCE OF ALBERTA

- 1 Automobile—Carelessness of driver. Licence Alta. 95-948.

## PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—Carelessness of driver, Licence B.C. 47358.  
 1 Automobile—Licence B.C. 56207.

Of the 18 accidents at highway crossings, 3 occurred at protected crossings, and 15 at unprotected crossings. Ten of the accidents occurred during daylight hours, and 8 during the night.

OTTAWA, May 22, 1930.

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The Board of  
**Railway Commissioners for Canada**

**Judgments, Orders, Regulations, and Rulings**

Vol. XX

Ottawa, June 15, 1930

No. 7

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*Application of the Corporation of the Township of South Dumfries, Ontario, under Sections 256 to 260, for an Order directing the diversion of what is known as the East River Road where it crosses Lots 13, 14, and 15 in the 6th Concession of the said Township in such a way as to divert the greater part of the highway traffic to a new highway to be opened up adjacent to and on the southeasterly side of the present right of way of the Lake Erie and Northern Railway from a point where said railway crosses the East River Road in said Lot 13 at grade, leaving the present crossings open as crossings for the benefit of the occupants of lands now abutting on that portion of the present River Road which lies between the said two present crossings; and to apportion the cost as between the Township and the Railway Company.*

File 18034.13

REPORT TO THE BOARD, AFTER HEARING, BY COMMISSIONER STONEMAN

Under section 12 of the Railway Act, being thereunto authorized by Order of the Board No. 43904, dated November 29, 1929, signed by the Chief Commissioner, I arranged to hold an investigation in this matter at Galt, Ont., on January 15, 1930.

After due notice had been given to the interested parties of this meeting and some correspondence followed, I postponed the date of my conference with the parties to allow the members of the Council of South Dumfries and the representatives of the Lake Erie and Northern Railway Company (C.P.R.) to arrange a meeting. At the Conclusion of that meeting it was decided that as the township of North Dumfries was also interested in the road diversion, the council of this municipality should be given an opportunity of being heard and joined as a party to the proceedings. Subsequently, on January 22 a meeting was held, when representatives of the Lake Erie and Northern Railway Company, the Council of North Dumfries, the Council of South Dumfries, and the Galt Suburban Area Commission were present. No satisfactory settlement having been effected at that meeting, the parties were desirous that a hearing should be arranged forthwith.



Pursuant to Order of the Board No. 4304, I held a sittings at Galt, Ont., on March 5, 1930, and now beg to report to the Board as follows:—

At the sittings referred to above the following appearances were made:—

Franklin Smoke, K.C., M.P., for the Township of South Dumfries.

Mr. Schofield, for the County of Waterloo.

Mr. Fairchild, C.E., for the Galt Suburban Area Commission.

J. B. Dalzell, for the Township of North Dumfries.

J. H. Hancock, for Mrs. James McCrea.

Angus McMurchy, K.C., for the Lake Erie and Northern Railway.

Application is made by the Township of South Dumfries for an order directing the diversion of the East River road on the west side of the Lake Erie and Northern Railway where it crosses lots 13, 14, and 15, in such a way as to divert the greater part of the highway traffic to a proposed new highway to be opened up adjacent to and on the southeasterly side of the present highway of the Lake Erie and Northern, from a point where the said railway crosses the East River road in lot 13, at grade. This diversion would involve the closing of one or both level crossings on the Lake Erie and Northern and would straighten the road from Galt to Paris by eliminating the present travelled portion between the two railway crossings approximately parallel to the bank of the Grand river. The road running north and south is the direct road between Galt and Brantford, and Paris is reached by two methods: (1) by following Brantford to the cross road running east and west from St. Georges through Blue Lake to Paris; (2) by means of the East River road leaving the Brantford road, which is north of the Sauder-McLane crossing, on the township line between North and South Dumfries, running directly through Glenmorris, and again connecting with the improved County road midway between Blue Lake and Paris. The East River road running along the bank of the river to a point where it joins the County highway, midway between Paris and Blue Lake is purely a township road. This route has been described as a scenic route attractive to travellers and appears to be the logical direct route from Galt to Paris from the east side of the Grand river. The roadway which it is proposed to eliminate by this diversion is and has been in a very bad state of repair. The proposed new diversion would shorten this road about 230 feet, making a much easier and more gradual grade, avoiding the very steep grade at the McCrea crossing as well as three sharp almost right angle curves and will dispense with the expense of its annual maintenance. The present East River road between the two crossings in question is very low, frequently flooded and costly to maintain. The Southern crossing—known as the McCrea crossing—situate in lot 15, concession 6, is wholly in the township of South Dumfries and at the southern end of the diversion descends upon a steep grade towards the river and the railway tracks and is considered a most dangerous crossing. About 200 feet north of the crossing an old mill has been remodelled into what is known as “Grand River Lodge” for tourist traffic, which is the property of Mrs. James McCrea and which is only operated during the summer months. If this crossing is ordered to be closed access to Mrs. McCrea’s property will be cut off entirely and her lodge will be isolated and situated so that it will not be conducive for the summer tourist business which she is engaged in during the summer months. The northern crossing, which is known as the Sauder-McLane crossing, in lot 14, concession 6, is situated on the dividing line between the township of North Dumfries and the county of Waterloo, and the township of South Dumfries, county of Brant. It is thus situated on the dividing line of both counties and townships and is on a level approach to the railway in both directions. This crossing is not considered a dangerous one. Sauder-McLane, however, have a farm crossing immediately north of the county boundary and independent of the public highway and they would not suffer to any appreciable extent if the



crossing was closed as they would still have access to their land. The Galt Suburban Area Commission recently improved the northern portion of the Brantford road from Galt to the township dividing line. The lower end of this improved road forms two branches, one directly connecting with the Brantford road, and the other being constructed as far as the dividing line at the Sauder-McLane crossing to the East River road. Therefore, the proposed diversion would provide the continuity which the Galt Suburban Area Commission are in need of to eliminate the inconvenience and danger involved at present to traffic desirous of travelling the East River road.

The unimproved road from the Sauder-McLane crossing and known as the East River road, extends to the County road midway between Blue Lake and Paris, is under the direct jurisdiction of the township of South Dumfries, county of Brant.

In connection with the Sauder-McLane crossing, half of this crossing belongs as a matter of law, to North Dumfries, and half to South Dumfries, and the highway from Galt until it reaches that crossing, is a county highway and its upkeep is provided for by the Galt Suburban Area Commission.

The municipalities of North and South Dumfries are interested parties in this application and the county of Waterloo is interested through the Galt Suburban Area Commission. It is admitted, in evidence, by the parties that the closing of the crossings and the proposed diversion would be in the interests of the public and would be a work carrying out the intent of the Act, as a work for the protection, safety and convenience of the public. The estimated cost of building the new highway would be in the neighbourhood of \$8,000, which would not include compensation, if any, to the landowners.

Previous to the hearing and subsequent to it an Engineer of our Board has gone carefully over the ground and reported upon conditions as they exist at present. At the hearing the applicants were able to establish the merits of their application, and all parties were agreed that one or both crossings should be closed and the highway diverted. The closing of the two crossings would eliminate the traffic over them, in the vicinity of the town line between North and South Dumfries. The upkeep of the highway from Galt to the crossing is provided for by both the township of North Dumfries and the county of Waterloo.

I have given very careful consideration to the submissions filed, as well as those presented orally at the hearing, and after perusal of all the facts now before me, I am in favour of allowing the application to divert the East River road and close both crossings, which would, in my opinion be a work for the protection, safety and convenience of the public.

The closing of the McCrea, or southerly crossing, would involve some land damages to the owner, and in this I would recommend that such land damages to be assessed should, in my opinion, be one to be determined by arbitration proceedings, and should be part of the cost.

Having come to the foregoing conclusion, the question now involved is one of the distribution of cost between the parties. In evidence, volume 555, pages 525 and others, reference is made to the assistance that would be given by the Department of Public Highways for the province of Ontario, and the Galt Suburban Area Commission. The funds of the Galt Suburban Commission are derived from the county, the city of Galt and the Department of Public Highways for the province of Ontario, and this commission would also be assessed for this work. A contribution from the Railway Grade Crossing Fund could also be made here, and I would recommend that the maximum contribution of 40 per cent be given. With the contribution from the Railway Grade Crossing Fund, a balance of 60 per cent would remain to be distributed. With the assisted contributions from the sources I have mentioned, the balance of cost would not, in my opinion, be a burden on any of the parties to be assessed.

The principle of assessing a proportion of the cost of diverting a highway, where the work is for the benefit of the counties, or townships, is borne out in previous decisions of the Board.

Lynn Road Crossing G.T.R., near Brockville, File 26765.2. Judgment of the then Assistant Chief Commissioner Scott, April 5, 1917.

Simcoe Street, Oshawa, Ontario, File 228, Judgment of Assistant Chief Commissioner McLean, November 26, 1928.

I therefore recommend the following as a fair and equitable distribution of cost, after the deduction of 40 per cent from the Railway Grade Crossing Fund:—

	Per Cent.
Lake Erie and Northern Railway Company.....	20
South Dumfries .....	20
North Dumfries .....	10
Galt Suburban Area Commission .....	10

The work on the closing of the crossings and of diverting the highway to be a charge upon the municipality of South Dumfries.

I would suggest that order issue accordingly.

Respectfully submitted,

J. A. STONEMAN,  
*Commissioner.*

OTTAWA, May 14, 1930.

ORDER No. 44768

*In the matter of the application of the Corporation of the Township of South Dumfries, in the Province of Ontario, hereinafter called the "Applicant," under Section 256 of the Railway Act, for leave to divert what is known as the East River Road where it crosses Lots 13, 14, and 15 in the 6th Concession of the said township, in such a way as to divert the greater part of the highway traffic to a new highway to be opened up adjacent to and on the southeasterly side of the present right of way of the Lake Erie and Northern Railway from the point where the said railway crosses the East River Road in the said Lot 15 at grade to the point where it crosses the said East River Road in the said Lot 13 at grade.*

File No. 18034.13

WEDNESDAY, the 21st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

The evidence in this application having been heard at Galt, Ont., March 5, 1930, by a Commissioner appointed under section 12 of the Railway Act, in the presence of counsel for and representatives of the applicant, the county of Waterloo, Galt Suburban Roads Commission, Township of North Dumfries, Mrs. James McCrae, and the Lake Erie and Northern Railway Company, the said Commissioner having reported to the Board, and the said report having been adopted,—

*The Board Orders:*

1. That the applicant be, and it is hereby, granted leave to divert what is known as the East River road where it crosses lots 13, 14, and 15 in the 6th



concession of the township of South Dumfries, in the province of Ontario, in such a way as to divert the highway traffic to a new highway to be opened up adjacent to and on the southeasterly side of the present right of way of the Lake Erie and Northern Railway from the point where the said railway crosses the East River road, in the said lot 15, at grade, to the point where it crosses the said East River road in the said lot 13, at grade, as shown on the plan and profile dated Brantford, August 15, 1929, on file with the Board under file No. 18034.13.

2. That upon the completion of the said diversion the applicant close the crossing on the line between the townships of North and South Dumfries, and the crossing on lot 15, concession 6, township of South Dumfries, known as the McCrae crossing.

3. That forty per cent of the cost of constructing the said diversion and eliminating grade crossings be paid out of the Railway Grade Crossing Fund, twenty per cent by the applicant, twenty per cent by the railway company, ten per cent by the township of North Dumfries, and ten per cent by the Galt Suburban Area Commission.

H. A. McKEOWN,  
*Chief Commissioner.*

*Application of Imperial Oil Company, Limited, Toronto, Ontario, for a ruling of the Board re rate on petroleum products, carloads, from Sarnia, Ontario, to Chatham, Ontario, via Pere Marquette Railway, for delivery on Canadian Pacific Railway and Chatham, Wallaceburg and Lake Erie Railway sidings at Chatham, Ontario.*

File No. 26963.93

BY THE BOARD:

This matter has been developed through written submissions filed by the interested parties. The question submitted for ruling is set out by applicant in a communication dated February 26, 1930, reading as follows:—

“During the years 1927 and 1928 we made numerous shipments of Petroleum Products in carloads from Sarnia, Ont., to Chatham, Ont., routed from Sarnia via Pere Marquette Railway and delivered in some instances on Canadian Pacific Railway sidings and in other instances Chatham, Wallaceburg and Lake Erie sidings at Chatham.

“We have had considerable correspondence, due to the Pere Marquette collecting and endeavouring to collect interswitching charges to cover delivery on Canadian Pacific and Chatham, Wallaceburg and Lake Erie Railway, the Pere Marquette finally agreeing with us that on those shipments delivered to Canadian Pacific Railway sidings no interswitching charge at Chatham should be assessed, but they still insist that on cars delivered to Chatham, Wallaceburg and Lake Erie sidings we should pay interswitching of  $\frac{1}{2}$  cent per one hundred pounds, or  $1\frac{1}{2}$  cents per one hundred pounds, according to whether siding is private or public, the line haul carrier absorbing  $\frac{1}{2}$  cent per one hundred pounds, as authorized on non-competitive carload traffic.

“The rate on petroleum products from Sarnia to Chatham is, and has been during the time the involved shipments moved,  $16\frac{1}{2}$  cents per cwt., as authorized in Pere Marquette Railway C.R.C. No. 2553 at item 742 on page 43 of tariff and item 742-A in Supplement 24. The same items quote the same rate,  $16\frac{1}{2}$  cents per 100 pounds to Charing Cross, Ont., a point located on both the Michigan Central Railroad and the Chatham, Wallaceburg and Lake Erie Railway. The tariff contains no routing instructions which would restrict the movement to certain junction points and it is our



contention that the traffic could be handled to Charing Cross either via Wallaceburg or Chatham, thence Chatham, Wallaceburg and Lake Erie Railway, and in either case Chatham on the Chatham, Wallaceburg and Lake Erie Railway would be intermediate, and, therefore, the traffic from Sarnia to Chatham would be competitive and as such not subject to inter-switching in addition to the 16½ cent line haul rate to make delivery on Chatham, Wallaceburg and Lake Erie tracks.

"We considered this case identical with that covered by the Board's Order No. 40227 of January 18, 1928, and have latterly declined to pay expense bills tendered us which included the interswitching charge until such interswitching charge was eliminated from the bills. At present the situation is that a number of cars are covered by a claim we have filed with the Pere Marquette for refund of interswitching paid and on other cars that line claims to be outstanding the switching which we consider is not due thereon.

"We respectfully submit the above and ask for a ruling as to whether or not the traffic Sarnia to Chatham is competitive as claimed by us and as such not subject to interswitching charges in order to effect Chatham, Wallaceburg and Lake Erie delivery."

The answer of the Pere Marquette Railway is contained in a letter dated April 22, 1930, from its freight traffic manager, reading:—

"Our position on this matter is that the rate to Chatham is non-competitive so far as deliveries on the Canadian Pacific or the Chatham, Wallaceburg and Lake Erie are concerned. It is, however, competitive so far as the Canadian National is concerned because that railway carries a rate from Sarnia to Chatham, but Canadian National deliveries are not involved in this controversy.

"So far as Canadian Pacific deliveries at Chatham are concerned, we concede that on shipments of petroleum products from Sarnia, requiring that delivery, the charges should not exceed the rate to a point beyond on the Canadian Pacific, and we concede the existence of such beyond rates, so that there is now no argument with the Imperial Oil Company so far as Canadian Pacific deliveries are concerned and their claims covering those deliveries will be paid.

"So far as the deliveries on the Chatham, Wallaceburg and Lake Erie are concerned, our position is that we have no rates and no working arrangement with the Chatham, Wallaceburg and Lake Erie on business from Sarnia except on some merchandise traffic where we have, for convenience, established through rates to strictly local points based on a combination of the local rates to and from Wallaceburg where we connect with the Chatham, Wallaceburg and Lake Erie Railway, and our route on that traffic is only via Wallaceburg. We have no direct connection with the Chatham, Wallaceburg and Lake Erie at Chatham and, as stated before, we have no working arrangement with them on general freight via any junction. This fact is well understood and to our knowledge neither the Imperial Oil Company nor any other shipper at Sarnia has ever forwarded, or tried to forward, carload traffic to points on the Chatham, Wallaceburg and Lake Erie via Chatham.

"Now, as we understand it, the contention of the Imperial Oil Company is that because in our tariff No. 6219-B, C.R.C. No. 2553, we name a rate to Charing Cross without any specific explanation of the route via which it will apply, that rate can be considered to apply, or rather construed for the purposes of this complaint as applying, via Chatham, Wallaceburg and Lake Erie at Wallaceburg, making Chatham intermediate, and that, therefore, Chatham would be intermediate to Charing

Cross whether the rate to Chatham proper, as named in the tariff, was considered as applying to Chatham via the Chatham, Wallaceburg and Lake Erie or not.

"Previously in our correspondence with the Imperial Oil Company they took the position that the rates would apply to Charing Cross via Chatham. In their letter to you they seem to take the position that the rate to Charing Cross would apply via Wallaceburg. It cannot properly apply via Chatham because, as stated before, there is no direct connection with the Chatham, Wallaceburg and Lake Erie at Chatham. In this connection, to show you that the matter has been pretty thoroughly gone into previously with the complainants. I enclose a copy of my letter of September 30 to Mr. Lown of the Imperial Oil Company, which stated clearly I think our position on the basis on which the matter was put up to us by the Imperial Oil Company up to that time.

"I desire to call your attention to page 12 of the tariff where the following clause occurs under the caption 'Application of rates to Pere Marquette Railway stations':—

'Except where provision is made herein to cover joint movements, rates named herein to stations reached via the Pere Marquette Railway direct will apply only via the Pere Marquette Railway.'

This clause, of course, eliminates any contention or theory that the rate to Chatham would apply via Wallaceburg and the Chatham, Wallaceburg and Lake Erie, as the clause quoted restricts the routing to Chatham to Pere Marquette.

"There was no attempt made so far as I know by the Imperial Oil Company to consign the cars to Chatham via Wallaceburg, which would perhaps have been the logical thing for them to do, if they were going to contend that Chatham on that line was intermediate to Charing Cross on that line; but of course we do not admit that there is really any rate in effect to Charing Cross via the Chatham, Wallaceburg and Lake Erie, the rate to Charing Cross applying via Fargo and the Michigan Central, via which route we have established working arrangements.

"I assume that you understand that the Chatham, Wallaceburg and Lake Erie is now for practical purposes out of business and have not operated for some little time, and consequently, regardless of any technical construction that might be placed on any provision or lack of provision in our tariffs as to the Chatham, Wallaceburg and Lake Erie, could have no practical effect because the railway as a going concern is not there. Therefore, as I see it, the question before you is merely one of the correct charges to apply on these shipments which moved some time ago and there is no occasion or necessity for any ruling as to the future."

Applicant made reply under date of May 9, 1930, to the answer of the railway company, as follows:—

"We have your favour of April 28, file 26963.93, subject: 'Appl'n. of Imperial Oil, Ltd., Toronto, re petroleum products in carloads, Sarnia to Chatham, via P.M.R.,' with which you inclosed copy of Pere Marquette Railway Company's letter of April 22, and in connection with that letter we beg to submit the following:—

"We note that it is admitted that Canadian Pacific Railway and Canadian National Railway deliveries at Chatham are considered competitive.

"So far as paragraph 4 of Pere Marquette's letter is concerned, wherein they state that they have no rates or working arrangement with



the Chatham, Wallaceburg and Lake Erie on business from Sarnia applicable on the shipments under review, wish to state that, as we are not informed by the various railroads as to what working arrangement they have one with the other, except as covered in the Tariffs published and filed with your Board, we contend that when the Pere Marquette Railroad issued and filed a tariff in which the Chatham, Wallaceburg and Lake Erie are party and do not show in that tariff specific routing, said rates to stations therein which can be reached by the Chatham, Wallaceburg and Lake Erie rails will, in the absence of specific routing prohibiting movement over Chatham, Wallaceburg and Lake Erie rails, apply in connection with that line. We, therefore, consider that rate to Charing Cross on petroleum and petroleum products, as outlined in Pere Marquette Tariff 6219-B, C.R.C. No. 2553, will apply from Sarnia to Charing Cross via P.M.—Wallaceburg—Chatham, Wallaceburg and Lake Erie, or, if the originating carrier desires to maintain for self a longer haul, via Chatham, will route via Chatham and Chatham, Wallaceburg and Lake Erie, using intermediate carrier at that junction point. Item 742 in tariff above mentioned, together with item 742-A in Supplement 24 to tariff, covers a rate of 16½ cents on petroleum and petroleum products from Sarnia to Chatham, Ont. The same items quote the same rate, namely 16½ cents, from Sarnia to Charing Cross, a point located on both the Michigan Central Railway and the Chatham, Wallaceburg and Lake Erie Railway. The tariff contains no routing instructions applicable in connection with these particular rates and, therefore, the Charing Cross rate would apply to intermediate stations, and this would include application to Chatham, Ont., on the Chatham, Wallaceburg and Lake Erie. Any shipments from Sarnia to Charing Cross routed P.M.—Chatham, Wallaceburg and Lake Erie—would necessarily move through Chatham and under the intermediate application Charing Cross rate of 16½ cents would apply to Chatham, Ont., for Chatham, Wallaceburg and Lake Erie delivery. By this line of reasoning we contend that the rate to Chatham is competitive, not only so far as deliveries on the Canadian National Railway and Canadian Pacific Railway are concerned, but also in regard to Chatham, Wallaceburg and Lake Erie deliveries at that station, and this whether traffic be routed via Wallaceburg, short hauling the Pere Marquette, or via the latter line direct to Chatham. Pere Marquette Railway C.R.C. 2439 as amended by Supplement 15 thereto shows connection between the Pere Marquette and the Chatham, Wallaceburg and Lake Erie at Chatham through either Canadian National Railway or Canadian Pacific Railway and clearly authorizes absorption of switching charges, including charges accruing to intermediate carrier on competitive traffic.

“In connection with reference by the Pere Marquette Railway on page 2 of their letter to item captioned ‘Application of rates to Pere Marquette Railway stations,’ we do not consider that this clause so generally published in carriers’ tariffs should be used, or was intended to be used to render void their responsibilities under interswitching tariffs and absorption tariffs on competitive traffic, or in any other way than to conserve to themselves the longest haul possible on traffic offering; otherwise we would respectfully contend that the effect of the clause in question, which commences with the statement that ‘Except where provision is made herein to cover joint movements,’ is nullified by the provision in tariff of rates without specific routing together with the provision for intermediate application of rates.

“Regarding statement made that this company did not attempt to route cars via Wallaceburg, would submit that we did not consider it neces-



sary to specify any definite junction point in order to secure the benefit of the competitive conditions and the absorption of switching, as we have been and are still firmly of the opinion that traffic from Sarnia for Chatham, Wallaceburg and Lake Erie delivery at Chatham is and has been competitive and, therefore, subject to no additional charge for inter-switching service.

"At the time our claim was first filed with the Pere Marquette Railway we submitted that this was a similar case to that ruled on by the Board in their Order No. 40227, in connection with complaint of the Canadian Lumbermen's Association of Canada.

"We respectfully ask that the above, along with our letter of February 26, be given consideration at your convenience and a ruling given us."

The tariff in question (Pere Marquette Railway C.R.C. No. 2553) is a competitive, local, joint and proportional commodity freight tariff applying on various commodities between stations on the Pere Marquette Railway in Canada, also from stations on the Pere Marquette Railway in Canada, Chatham, Wallaceburg and Lake Erie Railway, Essex Terminal Railway, and London and Port Stanley Railway to stations in Ontario, Quebec, and the Maritime Provinces.

In so far as concerns the rates on petroleum and petroleum products, car-loads, from Sarnia, on page 43 of the tariff (as amended by Supplement No. 24), the Pere Marquette Railway states that these rates have never applied to any destinations on the Chatham, Wallaceburg and Lake Erie Railway; that they have no prorating or working arrangement with the Chatham, Wallaceburg and Lake Erie Railway on general freight via any junction. The consummation of prorating and working arrangements is, of course, a prerequisite to the establishment of joint rates. On the other hand, the applicant sets out that the Chatham, Wallaceburg and Lake Erie Railway is shown as a participating carrier in the tariff, and contends that in the absence of any specific routing being shown prohibiting movement via the Chatham, Wallaceburg and Lake Erie Railway, the tariff should be construed as applying in connection with that line.

The tariff is open to the criticism that it does not show the routes for all joint movements covered thereby, but there are a number of tariffs on file with the Board subject to the same criticism, and it has not heretofore been required that such joint tariffs should specifically show the routing in connection with all joint rates published therein. Some years ago the Pere Marquette Railway combined some fifteen separate tariffs containing miscellaneous commodity rates into one general commodity tariff, namely, C.R.C. No. 2260, and the tariff here in question, C.R.C. No. 2553, is the current issue of that general tariff. The petroleum and petroleum products rates here in question were formerly contained in Tariff C.R.C. No. 2039, which is one of the tariffs included in the consolidated tariff referred to. In other words, the rates in Tariff C.R.C. No. 2039 are the predecessors of the rates here in question, and reference to the said tariff shows that the Chatham, Wallaceburg and Lake Erie Railway was not a participating carrier therein.

Where, as stated by the Pere Marquette Railway, there are no divisions, prorating or working arrangements in effect with the Chatham, Wallaceburg and Lake Erie Railway with respect to these rates on petroleum and petroleum products, and no joint movements have been made thereon to points on the Chatham, Wallaceburg and Lake Erie Railway, and in view of the fact that, as already stated, it has not heretofore been required that such joint tariffs should show the specific routing in connection with all joint rates published therein, the Board does not consider it would be reasonable to now rule that simply

because the Chatham, Wallaceburg and Lake Erie Railway is shown as having given a general concurrence to the Pere Marquette Railway, the rates in question must be construed as applicable via that line on account of the absence of a specific restriction of routing. Such a ruling would create a far-reaching precedent for the reason that there are a number of other tariffs on file with the Board similarly general in their application and without specific routing shown with respect to all joint rates published therein.

On page 12 of Tariff C.R.C. No. 2553, under the caption "Application of Rates to Pere Marquette Railway Stations," the following is published:—

"Except where provision is made herein to cover joint movements, rates named herein to stations reached by the Pere Marquette Railway direct will apply only via the Pere Marquette Railway."

The Board considers this has the effect of making the rate on petroleum and petroleum products from Sarnia to Chatham applicable via the Pere Marquette Railway only; that there is not in effect a joint rate from Sarnia to Chatham via the Pere Marquette Railway and Chatham, Wallaceburg and Lake Erie Railway of 16½ cents, and consequently, the Pere Marquette Railway is only required to absorb, in making deliveries on the Chatham, Wallaceburg and Lake Erie Railway tracks at Chatham, the amount of interswitching absorption published as applying on non-competitive traffic.

In view of what is stated in the correspondence concerning Canadian Pacific Railway deliveries at Chatham, no further comment thereon is here necessary.

With regard to applicant's contention as to the 16½-cent rate being applicable to Chatham on the Chatham, Wallaceburg and Lake Erie Railway as being intermediate, under the long and short haul provisions of the Act, to Charing Cross, to which a 16½-cent rate is published, as already set out, this rate has never been applied to Charing Cross via the Chatham, Wallaceburg and Lake Erie Railway, and would be applicable to that point only in connection with routing via the Michigan Central Railroad. There is no evidence that a car of petroleum or petroleum products has ever been shipped from Sarnia to Charing Cross via the Chatham, Wallaceburg and Lake Erie Railway at a rate of 16½ cents; nor that there are any divisions or prorating arrangements in effect permitting such a movement, which is a prerequisite to the establishment of a joint rate. In the absence of such evidence, no violation of the long and short haul clause is proven in connection with a shipment moving to Chatham.

This case is distinguishable from that of the Canadian Lumbermen's Association *re* lumber, Brighton siding, Que., to Chatham, Ont. (Volume 17, Board's Judgments and Orders, page 583), because in that case there was a joint rate published with specific routing clearly provided via the Chatham, Wallaceburg and Lake Erie Railway to a destination on that line beyond Chatham. In the present case, the tariff does not specifically show routing via the Chatham, Wallaceburg and Lake Erie Railway to a point beyond Chatham, making the latter intermediate.

OTTAWA, May 20, 1930.

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## ORDER No. 44834

*In the matter of the application of the Imperial Oil, Limited, Toronto, Ontario, hereinafter called the "Applicant," concerning interswitching charges assessed by the Pere Marquette Railway Company on carload shipments of petroleum products shipped during the years 1927 and 1928 from Sarnia, Ontario, to Chatham, Ontario, via Pere Marquette Railway for delivery on the Chatham, Wallaceburg, and Lake Erie Railway sidings at Chatham, Ontario.*

File No. 26963.93

WEDNESDAY, the 4th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*C. LAWRENCE, *Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon consideration of the written submissions of the applicant and the Pere Marquette Railway Company, and the report of its Chief Traffic Officer,—

*The Board declares:* That with respect to the said shipments, the Pere Marquette Railway Company is only required to absorb, in making deliveries on the Chatham, Wallaceburg, and Lake Erie Railway tracks at Chatham, the amount of interswitching absorption published as applying on non-competitive traffic.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

*Application of the Winnipeg Electric Co., under Section 252 of the Railway Act, for an Order authorizing the construction of a crossing, at grade, of its tracks with the tracks of the C.N.R. on Taché avenue, in the city of St. Boniface, Manitoba.*

File 16088.3

## JUDGMENT

VIEN, DEPUTY CHIEF COMMISSIONER:

The applicant is a company incorporated under the statutes of the province of Manitoba, 55, Victoria, c. 56 (1892), amended by 58 and 59 Victoria, c. 54 (1895).

Under the said statutes and under by-law No. 111 of the city of Saint Boniface, dated June 6, 1893, the company is authorized to construct and operate single or double-track lines on any street of the town of Saint Boniface, subject only to the approval of the plans by the municipal council.

In 1903, the applicant built a single track running north and south, along Taché avenue. In 1904, the Canadian National Railways built an industrial spur across the avenue and this single track, and, being junior, assumed the expense of construction, maintenance and protection of the crossing.

A few years later, the street railway, at the request of the city, laid double tracks along Taché avenue, up to the Canadian National Railways spur; at the spur, the double tracks converged into one line, and crossed the spur with only one set of rails. But there is a firehall on the east side of Taché avenue, opposite the point where the street car makes a safety stop before crossing the Canadian National Railways spur. This is objectionable, as it inconveniences the operations of the fire brigade and might, it is feared, in some circumstances, cause delay or accidents.



The city therefore requests the company to pass its double tracks right through, so as to remove this encumbrance from the street.

The Winnipeg Electric Company now applies for an order authorizing it to construct its double track across the Canadian National Railways spur, and, alleging its seniority, claims that the work should be done at the expense of the junior company.

The Canadian National Railway Company does not oppose the application, but contends that it should not be called upon to bear any part of the costs. It alleges that neither company owns the right of way, the street being civic and public property; that the only test that can be applied upon which to base seniority is the actual construction of one track with respect to any other; that, in the present case, the street railway is senior as to one track, but is junior as regards any new construction; that, consequently, the full cost of constructing, maintaining and protecting the crossing of the new track should be at the expense of the applicant.

There is no controversy as to the facts; the issue between the two companies is restricted to the question of costs.

As between railway companies, the usual practice of the Board, under the well known senior and junior rule, has been to impose upon the junior company, applicant or respondent, the whole cost of the installation, operation, maintenance and protection of a railway crossing. The Board sometimes relaxed the rule, when special circumstances warranted it, but not otherwise.

The Board has also determined that actual construction gives seniority, and not the location plan, and that a railway company having the right, under its charter, to construct one or more sets of tracks, becomes the senior company not only as to the first of its lines to be crossed by the line of the junior company, but also as to the crossing of any additional tracks subsequently laid by it, and that the junior company must bear the expense of making and protecting all such crossings, as new tracks are laid by the senior company. (G.T.R. vs. United Counties Ry. Co., 7, C.R.C., p. 294.)

"Where seniority is declared, that seniority is not likely to be disturbed, and the railway that is senior is generally, if not always, senior." (G.T.R. Co. vs. Kitchener and Waterloo Street Railway Company, 24, C.R.C., p. 13, and more particularly at p. 20.)

When a street railway owned by the city is constructed across the senior road, it was held that the street railway can claim the seniority of the city which owns the street. (The city of Edmonton vs. G.T.P. and C.N.R., 15, C.R.C., p. 443.)

The applicant's seniority as regards its first track is admitted, but the steam railway contends that neither company owns the right of way; that, therefore, as regards the construction of additional tracks by the applicant, the Canadian National Railways being already constructed on the street, is senior, distinction being made from cases wherein one party owns its own right of way, and is senior in respect of such right of way.

This objection was urged before this Board in 1908, but was overruled by the late Chief Commissioner who used the following language: "I am not able to follow the argument that there can be seniority as to one track, and not as to the other, and the ruling is that the Grand Trunk is senior not only as to the track already constructed, but as to the intended double-track." (7, C.R.C., p. 297.)

I adopt this reasoning. No good cause was shewn herein why the senior and junior rule as above interpreted, should be departed from. Neither company owns the right of way, but, as regards a street railway, the street is, in a sense, its right of way; it lays its tracks and operates thereon. The applicant holds its privilege and franchise since 1892, under its incorporation act, and since 1893, under a municipal by-law; it laid its tracks on Taché avenue in 1903,

prior to the construction of the industrial spur. Its seniority depends not upon its ownership of the land, but upon the prior construction of its line, and it covers not only the first line, but additional tracks subsequently to be built.

I am therefore of the opinion that the application should be granted, and that the cost of construction, maintenance, operation and protection of the crossing to be established should be at the expense of the Canadian National Railway Company.

OTTAWA, May 22, 1930.

Commissioner Stoneman concurred.

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ORDER No. 44793

*In the matter of the application of the Winnipeg Electric Company, hereinafter called the "Applicant Company," under section 252 of the Railway Act, for authority to construct its tracks across the tracks of the Canadian National Railways, at grade, on Tache avenue, in the City of St. Boniface, Province of Manitoba, as shown on the plan and profile dated September 19, 1929, on file with the Board under file No. 16088.3.*

TUESDAY, the 27th day of May, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*  
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, March 12, 1930, in the presence of counsel for the applicant company and the Canadian National Railways, and what was alleged,—

*The Board orders:*

1. That the applicant company be, and it is hereby, authorized to construct its double track across the track of the Canadian National Railways, at grade, on Tache avenue, in the city of St. Boniface, province of Manitoba, as shown on the said plan and profile on file with the Board under file No. 16088.3.

2. That the applicant company, under the supervision of an Engineer of the Canadian National Railways, insert a diamond in the track of the Canadian National Railways at the said crossing.

3. That the said crossing be operated in accordance with the provisions of section 306 of the Railway Act.

4. That the cost of construction, maintenance, and operation of the said crossing be borne and paid by the Canadian National Railways.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

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*Application of Henry Wismer, Windsor, Ont., for an Order directing and ordering the Detroit-Windsor Subway Company to pay compensation for damages caused by the construction of the company's entrance to tunnel under the Detroit River, and directing the manner in which said compensation shall be determined or make such other provision in regard to the said claim for compensation as to the Board may seem proper.*

File No. 35943.2

JUDGMENT

THE CHIEF COMMISSIONER:

This is an application by Henry Wismer, of the city of Windsor, for an order under section 255 of the Railway Act, directing compensation against the



Detroit-Windsor Subway Company for loss of profits in business, by reason of the temporary obstruction of London street during the construction of the company's Windsor entrance to the tunnel under the Detroit river.

The matter was listed for hearing at a session of the Board held at Windsor, Ont., on November 20 last, and it was agreed between counsel that a statement of facts material to the disposition of the claim to be prepared by the solicitors of the Detroit and Windsor Subway Company, and agreed to by Messrs. Davis & Dickson, solicitors for the complainant, would be laid before the Board. The statement so prepared and submitted is as follows:—

## THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

File 35943.2—Application of Henry Wismer.

*Re Detroit and Windsor Subway Company*

### STATEMENT OF FACTS DELIVERED BY DETROIT AND WINDSOR SUBWAY COMPANY

"1. Applicant's claim is solely for alleged loss of profits in his business as a real estate agent and rental agent carried on by him at number 18 London street East, in the city of Windsor, arising by reason of the temporary obstruction of London street during construction of the company's subway.

"2. London street was never at any time during the operations of the company, closed by or on behalf of the company to any traffic either vehicular or pedestrian except through traffic (that is traffic from Ouellette avenue to Goyeau street or vice versa).

"3. London street was closed by or on behalf of the company to through traffic (that is traffic from Ouellette avenue on the west to Goyeau street on the east or vice versa) on March 21, 1929, was re-opened for through pedestrian traffic on April 6, 1929, and was reopened to through vehicular traffic on August 21, 1929. Blue-print annexed prepared by Parsons, Klapp, Brinckerhoff and Douglas correctly shows the full extent of such temporary obstruction by or on behalf of the company of London street as actually took place, the shaded areas on said blue-print showing among other things that at all times the said premises 18 London street east were so far as any acts by or on behalf of the company were concerned continuously accessible from Ouellette avenue both to vehicular and pedestrian traffic.

"4. Said temporary closing of London street was carried out only after due compliance by the company with all rules and ordinances and statutory requirements necessary in that behalf including the filing of plans and specifications approved by the Board of Railway Commissioners for Canada and including the necessary approval of the corporation of the city of Windsor.

"Delivered this 27th day of January, A.D. 1930, by Bartlet, Barnes, Aylesworth and McGladdery, 201 Bartlet Building, Windsor, Ontario, Solicitors for Detroit and Windsor Subway Company.

"Agreed as to above facts.

"(Sgd.) DAVIS & DICKSON,

"*Solicitors for Claimant.*"

The blue-print annexed to such statement and referred to in the third paragraph thereof, shows that complainant's property affected is situate on the north side of London street, between Ouellette and Goyeau streets. On the plan a sidewalk is shown on the said northern side of London street aforesaid, in front of applicant's premises. It was narrowed by the works in question but,



nevertheless, such interference did not prevent access to Mr. Wismer's place of business from Ouellette street aforesaid, or from Goyeau street. Excavation necessary for the company's work compelled the closing of Ouellette street to through traffic for a period of five months, and in front of complainant's premises, but not so placed as to obstruct pedestrian traffic, a six-foot board fence was erected on March 21, 1929, remaining until removed five months later, whereupon vehicular traffic was resumed.

Although the approach to complainant's place of business was somewhat affected and perhaps rendered more difficult, it does not appear from the plan filed, or from the statement agreed to, that direct access thereto for pedestrians was ever cut off.

In a westerly direction from complainant's premises the sidewalk to Ouellette street, which was originally some fifteen feet in width, was curtailed to a breadth of twelve feet. Eastward to Goyeau street, a foot-bridge six feet wide was provided for foot passengers, as shown on the plan.

On the southerly side of London street a like curtailment of access took place on the side of the street opposite that on which Mr. Wismer's property is situate.

In the complaint filed by Mr. Wismer through his solicitors, it is stated on his behalf,—

“(1) That he is now and has been for some years a real estate agent carrying on business at number 18 London street east in premises adjoining the works of the said Detroit-Windsor Subway Company.

“(2) That by reason of the construction of said company's works and the excavation of earth necessary therefor, London street adjoining the place of business of the defendant has for several months been obstructed and business excluded from said street with the result that the applicant has suffered pecuniary loss.

“(3) That there is some doubt as to the right of the applicant to compensation except under section 255 of said Railway Act for the reason that in the orders made by the Board authorizing the said work there is no provision made for compensation for damages suffered by reason of the construction of said work.”

It will be noted that in the statement of facts agreed to and hereinbefore set out, the applicant bases his claim for compensation upon alleged loss of profits in his business. If, from the facts as laid before the Board, it may appear that applicant may have a well founded claim, I do not think that the fact that it has been inadvertently stated should preclude an inquiry into the same. It is clear, in my view, that the loss of profits in business in itself is not a subject of compensation in applications of this kind. But I think it may be considered as indicating the measure of damages to complainant by reason of injurious affection of his property. In the case of Canadian Pacific Railway Company v. Albin, 49 D.L.R. 630, Anglin J., now Chief Justice Anglin, has set forth most clearly the rule in that regard when he says, “the utmost use that can be made of evidence of loss of business ascribable to the exercise of powers conferred by the Railway Act in cases of injurious affection is indicated in my opinion in the following passage from the judgment of Lopes, L.J., p. 592, in Howard v. Metropolitan Board of Works (1888), 4 T.L.R., 591, quoted by Clute, J.:—

‘The plaintiff's house was injuriously affected by the execution of the works and the jury awarded compensation not for the loss of trade, which would not per se be a legitimate head of damage, but for the deterioration in value of the house as measured by the loss of trade.’”

I think where access to a man's premises has been obstructed to such a degree as to affect the owner's business or trade, a right to compensation arises, based on a diminution in value of his property, by reason of the construction of the works complained of.

If the proper and effective carrying on of complainant's business was prevented during the limited period named, by reason of interference with access to the place where it was carried on, such interference being caused by the works of the Subway Company, whereby loss was occasioned him, the property was, I think, injuriously affected by such construction of works, and for that reason I am of opinion that he is entitled to have his claim for compensation given consideration. Questions of fact are involved and while their determination is within the competence of the Board, the practice is to refer such dispute to a county court judge of the locality for his decision.

It may be that on an examination of the whole situation, it will not seem to him that the obstruction complained of and the restricted access during a limited period caused any diminution whatever in the value of complainant's land and, if so, such decision will be reflected in the finding to be made upon the arbitration proceedings. But under the circumstances here shown, I think Mr. Wismer is entitled to have his complaint sent to the county court judge for adjudication under section 255 of the Railway Act.

Considerable discussion took place concerning the propriety of the Board amending its orders authorizing the construction of the tunnel, so as to provide for compensation, and it was urged that as such orders were made *exparte*, it would be quite proper for the Board to attach conditions thereto, effective from the date of the respective orders. Even if such course were taken, or indeed if the orders had contained compensatory clauses in their original form, no more effect could be given to them than to have the matter in dispute sent to the county court judge for adjudication. It could not have broadened the basis of applicant's claim, which can only be effective in so far as it can be considered valid in law under the facts which may be shown before the county court judge.

The order will go accordingly.

May 26, 1930.

Assistant Chief Commissioner McLean concurred.

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ORDER No. 44779

*In the matter of the application of Henry Wismer, of Windsor, Ont., for an Order directing the Detroit and Windsor Subway Company to pay compensation for damages caused by the construction of its entrance to the tunnel under the Detroit river; and directing the manner in which such compensation shall be determined; or make such other provision in regard to the said claim for compensation as to the Board may seem proper.*

File No. 35943.2

WEDNESDAY, the 28th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Windsor, November 20, 1929, in the presence of counsel for the applicant and the Detroit and Windsor Subway Company, and what was alleged; and upon reading the further written submissions filed,—

*The Board orders:* That His Honour D. C. Ross, Surrogate Judge of the County of Elgin, be, and he is hereby, appointed arbitrator to determine the compensation, if any, to be paid the said Henry Wismer for damages caused by the construction of the said tunnel entrance under the Detroit river.

H. A. McKEOWN,  
*Chief Commissioner.*



*Application of the James Goldie Company, Ltd., Toronto, Ont., for an Order directing the Canadian National Railways to accord to the applicant arrangements for stop-off at Montreal, Quebec, and Moncton, N.B., for warehousing and reassembling, and privileges of reshipping to points in Quebec and the Maritime Provinces at the balance of the through rate, on all shipments of grain products from mills at interior points in Ontario, upon the same basis of equality as to rates, privileges and transportation services as is now accorded and allowed under above conditions by the said railway company to shipments of ex-lake grain products from Ontario bay ports to Montreal and other points in Quebec and the Maritime Provinces.*

File 8641.57

## JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

## I

The application as launched was made against the Canadian National Railways. Direction was given that copy of the application should be served on the Canadian Pacific Railway Company. The latter railway was represented at the hearing which took place at Ottawa on March 25, 1930.

## II

The application as worded requests that the Canadian National be directed to accord the applicant arrangements at Montreal, Quebec, and Moncton, N.B., whereby there will be a stop-off for warehousing and reassembling, and the privilege of reshipping to points in Quebec and in the Maritime Provinces at the balance of the through rate. It is alleged that these arrangements for which applicant asks and which are not accorded to it are allowed at present to shipments of ex-lake grain products from Ontario bay ports to Montreal and other points in Quebec and the Maritime Provinces. The application is, in substance, that the milling industry of the applicant should be on a basis of equality with the milling industry located at the Ontario bay ports engaged in milling of ex-lake grain.

It is further represented that flour is shipped from the mill at Guelph to points in Quebec and the Maritime Provinces; that the mill located at Guelph is not able to give its customers in the province of Quebec the same promptness of service as can be done by those enjoying the warehousing arrangements in Montreal. Customers within a short radius of Montreal can place their orders at that point and have them complied with within the next day or two thereafter. Competitors of the applicant having warehouse facilities at Montreal can bring their flour to their warehouse in Montreal and make up assorted cars, and supply these cars on short notice. Assortment is made in respect of brands of flour or different grain products. Shipments from Guelph, for example, to St. Hyacinthe take seven days. There is difficulty in doing business under such a situation, as the dealers have been educated to a hand-to-mouth buying. On the other hand, the dealers can telephone to Montreal and have their orders complied with on short notice.

Evidence was submitted on behalf of the applicant to show the difficulty of doing business under the existing arrangements, and showing that business had been lost as a result of this. The Guelph miller to get to e.g. St. Hyacinthe, would have to ship forward a carload quantity to that point, while it is contended that the one having the warehouse facility in Montreal can assemble at that point and hold for orders; and when shipment out is made it can be made on a short-distance movement requiring only a short period of time.



The milling of grain, ex-lake, received at the various Ontario ports, commonly designated as bay ports, brings up questions arising out of the relationship between the product of this grain milled at bay ports and the products milled at interior points east of the bay ports. From this has developed a rate structure which has been in existence for many years. This provides for equality of rate treatment as between the bay port and interior mills. The mills so situated can mill ex-lake grain and ship the product at the same rate to Eastern Canada. The rates published from bay ports on grain products—the product of ex-lake grain milled at said bay ports—which are not tarified as being in milling in transit rates, are 1 cent per 100 pounds higher than the ex-lake grain rates; that is to say, the rate on the product in question is the same as the ex-lake grain rate, plus 1 cent per 100 pounds for stop-off. This equalizes the rates.

### III

An analysis of the tariffs is pertinent. Canadian Pacific Railway Tariff C.R.C. No. 3967 names rates on ex-lake grain in carloads from bay ports to stations on the line of the railway and its connections, for local delivery and also for milling in transit and reshipment. Under this, the ex-lake grain rate, for example, from Goderich to Montreal, is 19½ cents. The ex-lake grain may be milled in transit and the product reshipped from milling point at balance of the through rate from bay port to ultimate destination, plus a charge of 1 cent for stop-off and also an additional charge for out of line haul, if any.

Section 2 of the tariff in question does not show Goderich as a milling station on ex-lake grain ex Goderich.

Item 10 (f), page 18, Supplement No. 60 of the tariff in question, publishes rates on grain products in carloads from bay ports. The rate is made up of the ex-lake grain rate, plus 1 cent.

The rates quoted apply only on the product, *inter alia*, the wheat, milled at the point at which it was received ex-lake, and the rates quoted "include charges from the elevator to the mill." Included in the shipping points is Toronto, and this applies to Toronto milling points—Leaside, Parkdale, North Toronto, Davenport, Swansea, New Toronto, West Toronto.

Under item (f) which has been referred to, the rate on grain products—the product of ex-lake grain—from Goderich to Montreal is 20½ cents. The product of ex-lake grain from Goderich milled at Guelph and reshipped to Montreal has, also, a rate of 20½ cents. This is made up of 19½ cents, plus 1 cent for stop-off.

Section 2 of the tariff in question provides that grain may be received (1) ex-lake at Goderich and shipped to Midland or Owen Sound, (2) from Midland to Goderich or Owen Sound, (3) from Owen Sound to Midland or Goderich, (4) from Port McNicoll to Owen Sound or Goderich; and the grain so received may be milled at the said destinations and the product reshipped under the milling in transit arrangements at the through rate, plus charge for stop-off and haul out of direct run.

C.P.R. Tariff C.R.C. E-4126, Item No. 103, provides—

"Shipments of grain products, the product of ex-lake grain, milled at Goderich, Midland, Owen Sound or Port Colborne, Ont., arriving at Fredericton, N.B., Joliette, Lennoxville, Montreal, Que., Ottawa, Peterborough, Ont., St. Hyacinthe, Que., Saint John, N.B., St. Johns, St. Lin, Sutton, Que., or Toronto, Ont., via the Canadian Pacific Railway, may, when removed to warehouses, for the purpose of reassembling, be reshipped in the original packages to points east of stop-off point, in the provinces of Ontario, Quebec, New Brunswick, Nova Scotia, and Prince Edward Island, also to points in New England States, viz., Connecticut, Maine,

Massachusetts, New Hampshire, Rhode Island and Vermont, within six (6) months from date of arrival at stop-off point, at the balance of the through rate in effect on date of shipment from original shipping point, plus charge of two (2) cents per 100 pounds for stop-off, and charge for out of line haul (if any), as shown in note 1."

The foregoing tariff provisions provides that movements as above described, which have already been provided with a stop-off arrangement for milling in transit, are given a second stop-off arrangement for warehousing, reassembling and reshipment.

Item 103 applies only from the named bay ports and would not apply on the product of ex-lake grain milled at Guelph. Item 102 of the same tariff provides a similar warehousing, reassembling, and reshipment arrangement, but is applicable on "Grain products, carloads, not handled under milling in transit arrangements, originating at points in Ontario and Quebec." As a shipment from Guelph, the product of ex-lake grain from Goderich, moving to Montreal, would go forward to point last named under the milling in transit arrangement, item 102 would not be applicable. It would only be applicable if, on the reshipment of the product from Guelph, it paid the local rate from Guelph.

Canadian National Railways Tariff C.R.C. No. E-1326 corresponds with the Canadian Pacific Railway Tariff C.R.C. No. E-3967. Taking, again, the movement Goderich to Montreal, the ex-lake grain rate is  $19\frac{1}{2}$  cents as published on page 24 of section 1 of the tariff. Section 3 of the tariff provides that this ex-lake grain may be milled in transit at the stop-off points named in said section and the product reshipped at the balance of the through rate from bay port to final destination, plus charge for stop-off and out of line haul, the stop-off charge being 1 cent. In the list of milling stations with charge for stop-off and haul out of direct run, if any, it is shown that grain may be shipped from Goderich ex-lake to Goderich as a milling station, stop-off charge being 1 cent, with a symbol reading,—

"Applicable only on grain switched from elevator to mill."

Reference is made to the fact that grain may be shipped from Goderich ex-lake to Goderich as a milling station. Another example in the same connection is that grain ex-lake at Tiffin can be switched from the elevator there to the mill at Midland, and is provided with the milling in transit arrangement, namely, when the product is shipped to Montreal the ex-lake grain rate of  $19\frac{1}{2}$  cents, plus stop-off 1 cent, a total of  $20\frac{1}{2}$  cents will apply.

The provisions of the Canadian National tariff above referred cover also the movements of ex-lake grain from various bay ports to bay port mills, either in line haul or switching service, milled at said bay port and the product reshipped to Montreal at the ex-lake grain rate of  $19\frac{1}{2}$  cents, plus the charge for stop-off and haul out of direct run, if any.

Section 4 of this tariff, item 25A, in Supplement No. 18, is a similar provision to that in item 10F, Canadian Pacific Railway Tariff C.R.C. No. E-3967, already referred to, i.e., it publishes on grain products, carloads, from the bay ports, rates that are 1 cent per 100 pounds in excess of the ex-lake grain rate, applicable on the products of ex-lake barley, buckwheat, oats, rye or wheat milled at bay ports named.

Canadian National Railways Tariff C.R.C. No. E-1205, item 115C, in Supplement No. 50, corresponds with item 103 in Canadian Pacific Railway Tariff C.R.C. No. E-4126. Item 120D in the same supplement corresponds with item 102 in Canadian Pacific Railway Tariff C.R.C. No. E-4126, and the same remarks as made in connection with the Canadian Pacific Railway items apply here.



## IV

A general outline of the complaint has been given. It can now be better developed in the light of the summary of tariff provisions which has been given.

The substance of applicant's complaint is that under tariff provisions published by the carriers, mills located at Goderich, Midland, Owen Sound, Port Colborne, or Toronto (being the bay ports at which there are mills), may ship the product of ex-lake grain, milled at said bay ports, to certain named points where it may be stopped-off for removal to warehouse for the purpose of re-assembling and reshipment in original packages within six months, to a point east of stop-off point, and the through rate from point of origin to final destination applies, plus stop-off charge of 2 cents per 100 pounds. There is a similar provision where the product is stopped-off for the purpose of change of destination and reshipment within twenty-four hours after arrival at stop-off point, without unloading, the stop-off charge in the latter case being 1 cent per 100 pounds. This privilege is denied the applicant and other interior mills, as while there is a similar stop-off privilege published for reassembling or change of destination of grain products originating at points in Ontario or Quebec, the tariffs stipulate that said arrangement is not applicable on traffic handled under the milling in transit arrangement, with the result that if the interior mill ships under the milling in transit privilege to the warehousing and assembling point, when the product is reshipped therefrom to the ultimate or final destination it is charged the local rate from the point at which stopped-off for warehousing and re-assembling. The other alternative, but which, in general, would produce a higher aggregate rate, would be to pay the local rate from bay port to milling point and then reship at the through local rate therefrom to the final destination plus the stop-off charge at the warehousing point.

If the mill at Guelph makes direct shipment to destination without stop-off at a warehousing and reassembling point, the total through charge is the same as from the Bay port, but evidence was given showing that the Guelph mill cannot compete, by handling in this manner, with the mills taking advantage of the reassembling privilege, on account of the inability of the Guelph mill to give the service to its customers which can be obtained through reshipment from reassembling point so much nearer the final destination. If the Guelph mill ships to the reassembling points and reships from there to final destination, it is subjected to a rate disadvantage which is illustrated by the following examples:

Ex-lake grain, milled at Goderich, and the product thereof shipped to Montreal for warehousing and reassembling, and reshipped to Truro, N.S.:—

	Per 100 lbs.
Through rate, Goderich to Truro.....	\$0 43½
Stop-off charge at Montreal.....	0 02
	<hr/>
Total rate charged .....	0 45½

Ex-lake grain from Goderich to Guelph, there milled, and product shipped to Montreal for warehousing and reassembling, and reshipped to Truro, N.S.:—

	Per 100 lbs.
Through rate, Goderich to Montreal.....	\$0 19½
Stop-off charge at Guelph for mill—in transit.....	0 01
Local rate Montreal to Truro.....	0 32
	<hr/>
Total rate charged .....	0 52½

or the other alternative above referred to:—

	Per 100 lbs.
Local rate, Goderich to Guelph.....	\$0 12
Local through rate, Guelph to Truro.....	0 45
Stop-off charge at Montreal.....	0 02
	<hr/>
Total rate charged .....	0 59



Ex-lake grain, milled at Goderich, and the product thereof shipped to Moncton for warehousing and reassembling, and reshipped to Truro, N.S.:—

	Per 100 lbs.
Through rate, Goderich to Truro.....	\$0 43½
Stop-off charge at Moncton.....	0 02
	<hr/>
Total rate charged .....	45½

Ex-lake grain, Goderich to Guelph, there milled, and product shipped to Moncton for warehousing and reassembling, and reshipped to Truro, N.S.:—

	Per 100 lbs.
Through rate, Goderich to Moncton.....	\$0 41½
Stop-off charge at Guelph for milling in transit.....	0 01
Local rate, Moncton to Truro.....	0 15½
	<hr/>
Total rate charged .....	0 58

Ex-lake grain milled at Goderich, and the product thereof shipped to Montreal for warehousing and reassembling, and reshipped to Sherbrooke, Que.:—

	Per 100 lbs.
Through rate, Goderich to Sherbrooke.....	\$0 28½
Stop-off charge at Montreal.....	0 02
	<hr/>
Total rate charged .....	0 30½

Ex-lake grain from Goderich to Guelph, there milled, and product shipped to Montreal for warehousing and reassembling, and re shipped to Sherbrooke, Que.:—

	Per 100 lbs.
Through rate, Goderich to Montreal.....	\$0 19½
Stop-off charge at Guelph for milling in transit.....	0 01
Local rate, Montreal to Sherbrooke.....	0 13
	<hr/>
Total rate charged .....	0 33½

It seems obvious that this reassembling privilege is of material benefit to the bay port mills using it. The arrangement was voluntarily established by the carriers and, no doubt, has its origin in an extension by the carriers to the bay port mills of a similar reassembling privilege to that which has been in effect for a considerable number of years on grain products originating at the head of the lakes or points west thereof, arriving at eastern Canadian points and stopped-off for reassembling and reshipment, at the through rate, plus stop-off charge. It is also clear that the interior mills cannot take advantage of the reassembling privilege except under a considerable rate handicap.

The submission of the railway companies states:—

“ Mills located at lake ports have no doubt a geographical advantage, but the railway companies cannot reasonably be required to equalize or neutralize this advantage, or, in other words, substantially move the Goldie Mill from Guelph to a lake port.”

From what has been set out herein concerning the rates themselves, as distinct from the reassembling privilege, it is shown that the rate structure does not give a rate advantage to the bay port mills, and the interior mills have the same rate treatment as would apply if located at the bay ports. The rate treatment here referred to has been before the Board on two occasions: first in 1907, and second by a judgment dated March 21, 1917, Board's file No. 4817.

The principal objection which appears to have been advanced by the railway companies against this application is the contention that they only allow one transit, or stop-off, on the product of ex-lake grain, their statement reading:—

“So far as the railway company is concerned, we only allow one transit or stop-off on the product of ex-lake grain milled at Port Colborne or Goderich and we allow the Goldie Milling Company one transit or stop-off.”

With regard to the foregoing statement, it is noted, on reference to the published tariffs of the railway companies, that grain ex-lake, milled at bay ports, may be handled in switching movements from the elevator to the mill, there milled, and the product subsequently reshipped to a reassembling point and later reshipped from the latter point at the through rate from bay port to final destination plus stop-off charge at the reassembling point. Some of these movements appear to be published as a milling-in-transit arrangement; other movements are provided for by stating that the ex-lake grain products rates from bay ports “include charges from the elevator to the mill.” Taking Toronto as an illustration, it is provided (Canadian Pacific Railway Tariff C.R.C. No. E-3967) that the rates on grain products, applying on the product of grain milled at the point at which received ex-lake, “will also apply on shipments milled at Leaside, Parkdale, North Toronto, Danforth, Swansea, Mimico, New Toronto, West Toronto.”

Regardless of the method of tariff publication, the situation is that movements, as illustrated, obtain two stop-offs under the through rate bay port to final destination, the first stop-off being accorded on the grain at the point where milled and the second on the product thereof at the reassembling point. This privilege has been denied the applicant, resulting in the complaint now before the Board. There is no difference in principle whether the initial movement of grain is a short one involving, perhaps, only a switching service, or a longer movement involving a line haul to the milling point. The service performed by the railway company is the same in both cases, namely, a car is placed at the bay port elevator for loading grain; it is hauled thence by the railway company to the mill and there unloaded; subsequently, another car is placed at the mill for loading the product which is shipped to a reassembling point and there unloaded; subsequently another car is placed at the reassembling point for loading the product, and it is reshipped to final destination. At the bay ports, some mills receive their grain direct ex-lake; the railway company does not handle it until the product of the ex-lake grain is delivered to the railway for forwarding east. In other cases, as above set out, it may first be handled in a rail movement from the elevator to the mill at the bay port; and in the latter case there is a stop-off involved although it may be said it is not charged for; that is to say, the ex-lake grain product rate from the bay port is just the same from the mill receiving its grain direct from the water as from the mill where a switching movement is involved in the handling of the grain between the elevator and the mill before it is manufactured into grain products, and the latter movement is, as already stated, taken care of by stipulating that the rates “include charges from the elevator to the mill.”

## V

It was stated in evidence that the arrangements referred to have existed in some phase for twenty-five or thirty years. Apparently this is erroneous. The first provision for the shipment of ex-lake grain products from Goderich to Montreal and other points for warehousing and reassembling was made effective August 20, 1924.



On consideration, it would appear that the present situation creates an unjust discrimination against the applicant and other interior mills similarly situated; and direction should issue that the interior mills should be put on a parity in this respect with their competitors operating from bay ports.

Some question was raised in regard to the Board's powers. Reference may be made to *Application of the Toronto Board of Trade, the Montreal Board of Trade, and the Canadian Manufacturers' Association for the same milling-in-transit privilege on Dried Peas as were accorded to other grains. 13 Judgments and Orders, 273, at p. 290.*

May 26, 1930.

Commissioner Norris concurred.

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ORDER No. 44758

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 21st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 22 to Tariff C.R.C. No. E-1234.

Supplement 29 to Tariff C.R.C. No. E-1235.

Supplement 2 to Tariff C.R.C. No. E-1504.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 44760

*In the matter of the application of the Detroit International Bridge Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of By-law dated May 17, 1930, passed by the Board of Directors of the Applicant Company, authorizing J. L. Fozard, Vice-President and General Manager, and R. B. McDougald, Assistant to Vice-President and General Manager, to prepare and issue tariffs covering the tolls to be charged for all traffic carried by the Applicant Company upon the Ambassador Bridge, and to specify the persons to whom, the place where and the manner in which such tolls shall be paid.*

File No. 36795.2

WEDNESDAY, the 21st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

*The Board orders:* That the said By-law dated May 17, 1930, on file with the Board under file No. 36795.2, be, and it is hereby, approved.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 44761

*In the matter of the application of the Detroit International Bridge Company, hereinafter called the "Applicant Company," for approval of its Tariff C.R.C. No. 2, cancelling C.R.C. No. 1, covering the tolls to be charged in respect of the Ambassador Bridge across the Detroit River between the Town of Sandwich, in the Province of Ontario, and the City of Detroit, in the State of Michigan, on file with the Board under file No. 36795.2.*

WEDNESDAY, the 21st day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

*The Board orders:* That the applicant company's Tariff C.R.C. No. 2, cancelling C.R.C. No. 1, covering the tolls to be charged in respect of the Ambassador bridge across the Detroit river between the town of Sandwich, in the province of Ontario, and the city of Detroit, in the state of Michigan, on file with the Board under file No. 36795.2, be, and it is hereby, approved.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44770

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

FRIDAY, the 23rd day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published to Windsor, Ont., in Supplement No. 12 to Tariff C.R.C. No. E-4324, filed by the Canadian Pacific Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 12 to Tariff C.R.C. No. E-4324, approved herein, are the class rates published in Tariff C.R.C. No. E-3221 to Windsor, Ont., for Canadian Pacific delivery.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44771

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 23rd day of May, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the toll published in Supplement No. 12 to Tariff C.R.C. No. E-1354, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44782

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.12

TUESDAY, the 27th day of May, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item 37 of Supplement No. 5 to Tariff C.R.C. No. E-4369, filed by the Canadian Pacific Railway Company in its own behalf and as agent under power of attorney for the Dominion Atlantic Railway, Fredericton and Grand Lake Coal and Railway, New Brunswick Coal and Railway, and Temiscouata Railway, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 37 of Supplement No. 5 to Tariff C.R.C. No. E-4369, approved herein, are the first class rates or multiples thereof, in effect prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44783

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.13

TUESDAY, the 27th day of May, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll published in item 6 of Supplement No. 21 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 6 of Supplement No. 21 to Tariff C.R.C. No. 783, approved herein, is 16½ cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 44785

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.2

WEDNESDAY, the 28th day of May, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement 21 to Tariff C.R.C. No. E-1237, Supplement 11 to Tariff C.R.C. No. E-1247, and Supplement 10 to Tariff C.R.C. No. E-1258, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 44790

*In the matter of the complaint of the Westfield Country Club, of Westfield Centre; the Epworth Park Outing Association, of Saint John; the Pamdenec Outing Association, of Saint John; the Ketspec, Belmont, Morna Outing Association, of Saint John; and the Grand Bay Outing Association, of Grand Bay, all in the Province of New Brunswick, against the commutation rates charged by the Canadian Pacific Railway Company out of Saint John.*

File No. 7287.31

WEDNESDAY, the 28th day of May, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Saint John, September 19, 1929, in the presence of counsel for the Westfield Country Club, the Epworth Park Outing Association, the Pamdenec Outing Association, the Grand Bay Outing Association, and the Canadian Pacific Railway Company, and what was alleged,—

*The Board orders:* That the commutation fares published by the Canadian Pacific Railway Company in Tariff C.R.C. No. 179, between Saint John, New Brunswick, and stations west thereof to and including Welsford, New Brunswick, be, and they are hereby, cancelled; and that there be substituted therefor, effective not later than June 15, 1930, revised commutation fares in accordance with the order of the Board No. 29152, dated April 1, 1920, and based on the actual distance.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 44807

*In the matter of the application of C. N. Ham, Chairman of the Express Traffic Association for Canada, for approval of Supplement No. 13 to Express Classification for Canada No. 7.*

File No. 4397.94

MONDAY, the 2nd day of June, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said Supplement No. 13 to Express Classification for Canada No. 7, C.R.C. No. E.T. 986, be, and it is hereby, approved.

H. A. McKEOWN,  
*Chief Commissioner.*

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## ORDER No. 44808

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

MONDAY, the 2nd day of June, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 11 to Tariff C.R.C. No. E-1239 and in Supplement No. 18 to Tariff C.R.C. No. E-1302, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*





**The Board of  
Railway Commissioners for Canada**

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**Judgments, Orders, Regulations, and Rulings**

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**Ottawa, July 1, 1930**

**No. 8**

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*Application of Town of Sandwich for an Order directing the Express Traffic Association and the Member Companies thereof operating Express Service in and to the City of Windsor to extend the Free Local Collection and Delivery Zone for Express Traffic from the City of Windsor or to Create a Free Local Collection and Delivery Zone in certain parts of the Town of Sandwich.*

File No. 4214.399

**JUDGMENT**

**THE CHIEF COMMISSIONER:**

The Municipal Corporation of the Town of Sandwich, by Messrs. Sale & Sale, its solicitors, has applied to the Board for an order under sections 362 and 363 of the Railway Act, directing the Canadian Pacific Express Company, the Canadian National Railways Express Department, and the American Railway Express Company as follows:—

“To extend the free local collection and delivery zone for express traffic from the city of Windsor, or to create a free local collection and delivery zone in all that portion of the town of Sandwich which may be described as follows: Commencing at the intersection of the easterly town limits with the edge of the Detroit river; thence southerly along the easterly limits of the town of the Essex Terminal Railway main line; thence along the main line of the Essex Terminal Railway to Centre road; thence along Centre road to Queen street; thence along Peter street to the limit between lots 58 and 59; thence westerly to Sandwich street and along Sandwich street to the southwesterly limit of the lands of the Canadian Salt Company Limited, and along the Detroit river to the beginning.”

In support of the application, it is stated that the population of the town of Sandwich exceeds 10,000 people; that the easterly portion of the town as far



west as Felix avenue is divisible into nine square blocks, measuring one-quarter of a mile each way; that there are in the said nine blocks, respectively, the following number of families, viz.: In block one 185 families, block two 351 families, block three 221 families, block four 121 families, block five 96 families, exclusive of the permanent staff of Assumption College, numbering 40, and the resident students numbering 250 which, calculated at five in a family, would make block five a total of 154 families; block eight 135 families, block nine 88 families.

The nine blocks just mentioned lie between the city of Windsor on the west, and Felix avenue on the east, and are in the form of a quadrilateral, except, as it is pointed out, where the Detroit river takes a bend, which makes the northerly boundary of block nine irregular.

Blocks ten and eleven lie west of Felix avenue and between their common eastern line and the western boundary of blocks seven and eight, there is a triangular space somewhat larger in area than one and a half of the blocks already described, and which triangular space contains 397 families. This is dealt with by the applicants as being a portion of block nine which is slightly curtailed in area by the bend of the Detroit river, but to which the addition of the aforesaid triangular section gives a total area larger than the contents of the other blocks, and contains 485 families.

The configuration of the river makes a block area difficult just at that point, and inasmuch as it cannot be rigidly adhered to, I think the block system may be considered as secondary at this point to the main idea of giving free cartage to an equivalent area populated as densely as is called for in the judgment of 1919, 25 C.R.C. 61, if the other requisites including properly constructed streets and highways are in existence. I, therefore, do not think that there is anything insupportable or unreasonable in the suggestion that under the circumstances, this triangular space may be considered part of block nine.

Westerly from Felix avenue, the five next adjacent blocks wherein free cartage and delivery are asked are as follows: Block ten 168 families, block eleven 156 families, block twelve 226 families, block thirteen 145 families, block fourteen 105 families, and immediately to the northwest of block fourteen, and with the same northeastern side line, is block fifteen, shown as having 78 families, to the southwest of which is block sixteen having 66 families.

The eastern corner of block sixteen is shown by the plan in evidence to be within the premises of the Canadian Salt Company. The block having the requisite number of families for free cartage and delivery, and nearest to such last named company's premises, is block fourteen, which, however, is separated from such premises by a distance exceeding a quarter of a mile.

It is pointed out that the city of Windsor enjoys free delivery and collection service to the western boundary thereof, which is the eastern boundary of the town of Sandwich, and that the density of population and express traffic in the said city of Windsor is no greater than within the adjoining area applied for; that inasmuch as free collection and express delivery are being operated in the city of Windsor, and in the northern part of the town of Walkerville, very little expense would be involved in an extension of such service to include the portion of the town of Sandwich above described; and it is further stated that the express traffic originating and terminating therein is now sufficient to warrant the creation or extension of such free collection and delivery zone.

The application is opposed by the Express Traffic Association which says that the volume of traffic at Sandwich is not sufficient to warrant the expense of operating an agency and vehicle service at that place. It has submitted statements of the number of express shipments and revenue for the limited

period hereinafter detailed, as well as the estimated cost of operating a single delivery within the town of Sandwich, also a statement of express traffic handled by the Canadian National Express during a six months' period ending March 31, 1929, as follows:—

Month	Number of Shipments	Earnings
October, 1928.. . . . .	237	\$ 240 93
November, 1928.. . . . .	278	273 43
December, 1928.. . . . .	403	381 10
January, 1929.. . . . .	146	130 19
February, 1929.. . . . .	173	155 19
March, 1929.. . . . .	237	315 26
	<u>1,477</u>	<u>\$1,496 10</u>

And on the part of the Canadian Pacific Express, the following figures were submitted:—

Month	Number of Shipments	Earnings
November, 1928.. . . . .	149	\$ 126 00
December, 1928.. . . . .	286	228 63
January, 1929.. . . . .	104	83 31
February, 1929.. . . . .	130	105 99
March, 1929.. . . . .	189	155 60
	<u>858</u>	<u>\$ 699 53</u>

It is set out that the cost of a single delivery outfit to perform the cartage service for the Canadian Pacific Express would be approximately \$180 per month, while that of the Canadian National Express is estimated at \$250 per month.

The Express Traffic Association submitted also a statement of the full number of shipments and earnings for the year 1928, by both express companies, which is detailed as follows:—

Month	Canadian National Express		Canadian Pacific Express	
	Number of Shipments	Earnings	Number of Shipments	Earnings
January.. . . . .	47	\$ 127 89	207	\$ 154 42
February.. . . . .	164	124 25	121	95 43
March.. . . . .	166	186 40	120	114 65
April.. . . . .	214	198 47	137	129 64
May.. . . . .	228	154 59	137	123 57
June.. . . . .	240	196 77	131	122 80
July.. . . . .	198	146 42	85	82 31
August.. . . . .	167	172 19	138	185 38
September.. . . . .	213	197 44	150	168 38
October.. . . . .	263	265 93	190	151 05
November.. . . . .	284	264 04	149	126 00
December.. . . . .	411	356 44	286	228 63
	<u>2,595</u>	<u>\$2,390 83</u>	<u>1,851</u>	<u>\$1,682 26</u>

Following the application, the matter proceeded to hearing in Windsor, last winter, and details were submitted to the Board verifying the statements made in the petition.

It is a matter of common knowledge that the municipalities of Sandwich and Windsor have grown so completely together that no distinction is noticeable between them as regards business conditions; care of streets, lighting, police supervision and other municipal services.

The general subject of free express delivery has been before the Board on previous occasions, and has been the subject of consideration from time to time. The area to be thus served by such companies is clearly stated in the judgment of the Board reported in 25 C.R.C. 61. This judgment was followed



in the case of the parish of Lancaster (vol. 16, Board's Order, Judgments, etc., p. 115) wherein it was held that free delivery should not be directed beyond the limits of the city of Saint John, although it appeared that in going from one part of the city to another, a frequently travelled route carried the express delivery wagons through a portion of the adjoining parish in which such delivery was sought.

The sections of the Railway Act conferring power upon the Board as regards express business (ss. 360 to 366 inclusive) are especially concerned with express tolls and tariffs, the definition of carriage by express, contracts limiting liability, as well as with a regulatory power as to what goods may be carried by express. In the judgment first above alluded to, *Express Traffic Association v. Cities of Montreal, Toronto, Winnipeg, et al*, 25 C.R.C. 61, it is said, p. 105:—

“ The Board in the past has not ordered a wagon service to be installed at any point; but has from time to time, by order, enlarged the existing delivery limits when streets have been paved, and the density of population was such as, in the opinion of the Board, warranted placing the extra cost of the extended service on the express companies.”

The judgment from which the above extract is taken comprises a very comprehensive review of the whole express business, and deals with matters of express charges, practices, classification and delivery limits. The learned Chief Commissioner, after a thorough discussion of the different phases of the problem, enumerated certain rules which were concurred in by all the other members of the Board. Inasmuch as reference to several of them is here necessary, it may be well to set them out in full.

1. The corporate area shall be mapped into four parts by lines intersecting at right angles at a centrally located point, and based on these lines each such part shall be divided into squares measuring one-quarter mile each way, hereinafter called “ blocks.”

2. The minimum qualification for free cartage shall be four adjoining blocks, each containing at least 100 families, in places with a population of 5,000 or over, and 50 families in places with a population less than 5,000; except that in places with a population less than 1,000 free cartage may be provided in the discretion of the company.

Industrial plants and business houses shall be initially reckoned as one family of five (or less) regularly employed persons, and each additional five as one family more.

3. From said four primary blocks each successive block conforming to the requirements of rule 2 shall be included in the free cartage area.

4. Any block not conforming to the minimum requirements of rule 2, but which is bounded on three sides by cartage blocks, or through which the express vehicles necessarily pass, shall be included in the free cartage area.

5. Four or more contiguous blocks conforming to the requirements of rule 2, but separated from the free cartage area hereinbefore defined by not more than one-quarter mile (air mileage) shall receive the free cartage service.

6. Industries, or business or public institutions, in non-cartage blocks shall receive the free cartage service, provided they are not more than one-quarter mile from the nearest cartage block, and the intervening area shall also be so served.



7. A detour of more than one-quarter mile outside of the free cartage area, in order to use an intervening bridge or vehicular ferry, is not hereby required.

8. Free cartage is not required by these rules beyond the corporate limits, nor within such limits where or when the roads are not reasonably passable by express vehicles.

9. The boundaries of the free cartage area shall be defined by thoroughfares or topographical features nearest or most convenient to the farthest lines produced by these rules.

Free cartage shall also be extended to a thoroughfare beyond but bordering the cartage limit, provided that at least 75 per cent of its lots within a block are occupied, and that convenient cross connections exist; such thoroughfare to become the provisional limit with respect to the next thoroughfare beyond but adjacent to it that complies with the said minimum requirement; and so on until a complete block is formed under rules 1 and 2.

A description of the local free cartage limits shall be posted in the express office at each cartage point and filed with the Board.

10. Should the traffic at any cartage point be so limited as, in the judgment of the company, not to warrant the expense of furnishing its own vehicles, an independent agency shall be employed by the company at its own expense, and shall be used until and unless the company is able to show to the satisfaction of the Board of Railway Commissioners that the price demanded for such service is unreasonable.

The present application exhibits features which do not seem to have been heretofore presented to the Board. The directions of rule 1, above, have been followed where possible, in the division of that portion of the town of Sandwich above referred to, into blocks measuring one-quarter of a mile each way, for the purpose of this application. As above shown, the number of adjoining blocks necessary for the minimum qualifications of free cartage has been considerably exceeded and, with the exceptions above dealt with, the blocks contain over 100 families. From this, it is apparent that the applicants have brought themselves to that extent within the rules laid down in the 1919 judgment. It is also of record that no objection can be urged against the extension asked for because of ill-constructed thoroughfares, for the streets over which travel would be made are in good repair and of modern construction.

While many instances of present personal inconvenience were shown, and conditions which seem discriminatory exist, as detailed in the evidence of Mr. Thrasher, Mayor of Sandwich, and other witnesses, yet it cannot be overlooked that any system which sets certain defined limits for delivery or carriage must of necessity seem to be discriminatory to those living immediately beyond the prescribed border. It is a condition which seems unavoidably to attach itself to arbitrary limitations. While appreciating the annoyance and additional expense experienced by those who are not fortunate enough to be included in a defined district, nevertheless I would not be inclined for that reason alone to disturb existing boundaries, or to unduly enlarge the same. Of more importance, it seems to me, is the delay complained of, consisting at times of two or three days, and it further appears that upon the arrival of goods at Windsor, destined for Sandwich, no notification is sent out unless the goods remain uncalled for after a period of forty-eight hours.

In regard to the expense involved, it was shown by the carter who makes delivery in Sandwich of some ninety per cent of the express parcels, that he has

a minimum charge of 25 cents on parcels running up to 100 pounds, and 25 cents for each additional 100 pounds, and while he does not average 300 parcels per month, yet in December the number would run to twice that figure.

The situation which calls for adjustment is occasioned by the fact that adjoining the city of Windsor a comparatively large town is growing up with a present population of between eleven and twelve thousand people which, fulfilling the conditions laid down in the above quoted rules, can be divided into blocks, twelve at least in number and interconnected, comprising a portion of the area of a town which, to the visitor, is indistinguishable from the city of Windsor itself. This condition does not seem to have been contemplated in any of the rules above laid down, and having regard to the conditions of business throughout the whole area, including both municipalities, it is argued that these rules should be enlarged, or added to, to cover a case like the present.

Rule 8 declares that free cartage is not required beyond the corporate limits, nor within such limits, where or when the roads are not reasonably passable by express vehicles. Attention was apparently being confined to the conditions limiting free delivery within municipalites, for the paragraph immediately preceding the rules states, in effect, that a given municipality may include large blocks of vacant land where neither business nor density of population would appear to be very great, and the streets therein unpaved, and these conditions are given as the reasons for limiting delivery to part of a corporate area and, I think, they may fairly apply to the paragraph throughout. Where, throughout the entire corporate limits, the volume of traffic and the population are sufficiently dense, and other requisites exist, free delivery would be within the rule, and where two municipalities have actually grown together with an unbroken density of population and volume of business and with equal conditions on both sides of the border line, I can see no reason why a continuation of such service should not prevail throughout the two neighbouring municipalities, to the degree and extent to which they conform to the other requisites of service embodied in the rules.

Emphasis was laid on the wording of rule 8 by Mr. Ham, who appeared for the Express Traffic Association, and if it were a case of construing a statute, I would feel compelled to give more attention to the punctuation of the rule and the implication arising therefrom. It is readily admitted that this lends itself forcibly to an argument that the rule is intended to confine delivery within corporate limits in all instances. I am not convinced, however, from reading the judgment, that cases like the present were in the mind of the learned Chief Commissioner, who was dealing with the matter as it was presented to him at that time.

From what has been shown to the Board, it seems to me that the free cartage and delivery limits of the express companies should be enlarged to take in a portion of the town of Sandwich, although not to as great an extent as asked for. It is undesirable, I think, to break in upon the principles which have been laid down in the judgment of 1919, as the same were applied to the facts before the Board, and consequently I cannot see my way clear to favour the extension of such cartage and delivery into blocks which have not the 100-family condition laid down in the judgment, nor to the premises of the Canadian Salt Company which, as above explained, is in a non-cartage block and is more than a quarter of a mile away from the nearest cartage block, namely, number 14, as the matter has been explained to the Board.

I think free express delivery limits should be extended into the town of Sandwich in conformity with the provisions of the rules laid down in the judgment of 1919 and of this judgment.

June 2, 1930.



ASSISTANT CHIEF COMMISSIONER McLEAN:

Having in mind the continuity of settlement as between Sandwich and Windsor and the contiguity of the Windsor area, in which there is a free express delivery, to that of Sandwich, and on the particular facts I agree in the action recommended by the Chief Commissioner. I suggest that the Express Traffic Association, or the express companies should make the survey in accordance with the principles laid down in the judgment of 1919; subject, however, to such modification, if any, as may be introduced by the present judgment.

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ORDER No. 44886

*In the matter of the application of the Municipal Corporation of the Town of Sandwich, under sections 362 and 363 of the Railway Act, for an Order directing the Canadian Pacific Express Company, the Canadian National Railways Express Department, and the American Railway Express Company to extend the free local collection and delivery zone for express traffic from the city of Windsor, or to create a free local collection and delivery zone in all that portion of the town of Sandwich, which may be described as follows: Commencing at the intersection of the easterly town limits with the edge of the Detroit river; thence southerly along the easterly limits of the town to the Essex Terminal Railway main line; thence along the main line of the Essex Terminal Railway to Centre road; thence along Centre road to Queen street; thence along Peter street to the limit between lots 58 and 59; thence westerly to Sandwich street and along Sandwich street to the southwesterly limit of the lands of the Canadian Salt Company, Limited, and along the Detroit river to the beginning.*

File No. 4214.399

FRIDAY, the 20th day of June, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Windsor, Ont., November 20, 1929, in the presence of counsel for and representatives of the applicant and the Express Traffic Association of Canada, and what was alleged,—

*The Board orders:* That the free express delivery limits in the city of Windsor, province of Ontario, be, and they are hereby, extended to include that portion of the town of Sandwich, in the province of Ontario, adjacent thereto which conforms to the provisions of the judgment of the Board dated July 17, 1919, as applicable to one municipality.

H. A. McKEOWN,  
*Chief Commissioner.*



*Consideration of the question of the seniority of the companies at the crossing of the Toronto, Hamilton and Buffalo Railway and the Hamilton Street Railway on Aberdeen Avenue, Hamilton, Ont., reserved by paragraph (5) of Order No. 43009, dated July 17, 1929.*

File No. 22581.2.

## JUDGMENT

### THE CHIEF COMMISSIONER:

The Hamilton Street Railway Company has made application to the Board for an order under section 252 of the Railway Act, authorizing the applicant company to operate its cars over the crossing of the Toronto, Hamilton and Buffalo Railway Company on Aberdeen avenue, in the city of Hamilton. It is set out in the application that by order of the Board No. 29857, dated July 15, 1920, the Toronto, Hamilton and Buffalo Railway Company and the Hamilton and Dundas Street Railway Company were authorized to operate their trains and cars over the said crossing; that by agreement dated 25th day of May, 1926, made between the Corporation of the City of Hamilton and the applicant company, it is provided, *inter alia*, that the applicant company operate as part of its street railway system, the Hamilton and Dundas Street Railway on Queen street from Herkimer street to Aberdeen avenue, and on Aberdeen avenue from Queen street westerly to the limits of the city of Hamilton, and that, prior to the 30th day of June, 1928, it should acquire the ownership of said portion of the Hamilton and Dundas Street Railway and of all necessary poles, wires and apparatus for the proper operation of the applicant company's street railway system, which the applicant company says it has done. It then alleges that it is necessary for the operation of the said portion of railway above described, that it be permitted to operate its cars over the said crossing.

To this the Toronto, Hamilton and Buffalo Railway Company makes answer alleging that its railway is senior to the street railway of the applicant company; that the Hamilton and Dundas Street Railway Company ceased to operate its railway on Aberdeen avenue and elsewhere about four years ago, and has not operated its railway since that time, and has entirely abandoned its enterprise. It further alleges that the Hamilton Street Railway Company is subject to the Ontario Railway Act, and to the jurisdiction and orders of the Ontario Railway and Municipal Board, and that its agreement with the city of Hamilton has not been sanctioned by such Board. It further declares that it has no objection to the crossing asked for, provided that the tracks of the Toronto, Hamilton and Buffalo Railway Company be declared senior to those of the applicant company.

The applicant company in reply alleges that its railway is senior to that of the Toronto, Hamilton and Buffalo Railway Company, and denies that the Hamilton and Dundas Street Railway Company ceased to operate its railway, or has abandoned its enterprise, and while admitting that the Hamilton and Dundas Street Railway Company stopped running its cars on Queen street and on Aberdeen avenue about four years ago, it says that from that time until it acquired the ownership of said portion of railway as set out in the application, the applicant company operated the Hamilton and Dundas Street Railway on Queen street and along Aberdeen avenue under agreement with the latter railway, to a point a short distance east of the crossing referred to.

The matter came on for hearing at Hamilton last winter, and the whole discussion bore upon the question of seniority which is claimed by both parties to the dispute.

It appears that as far back as the year 1913, the Toronto, Hamilton and Buffalo Railway Company applied to the Board for an order authorizing it to

construct and operate a branch line of railway or spur, across Aberdeen avenue, at grade, and also across the tracks of the Hamilton and Dundas Street Railway Company then upon Aberdeen Avenue aforesaid, to serve a manufacturing plant to be erected by the Canadian Westinghouse Company Limited.

It is unnecessary to recite the various details of this application, but it is instructive to know that by Order of the Board No. 20711, dated October 20, 1913, the Toronto, Hamilton and Buffalo Railway Company was authorized to construct, maintain and operate its branch line of railway or spur, as applied for, across Aberdeen avenue and the tracks of the Hamilton and Dundas Street Railway Company on Aberdeen avenue at grade, to serve the Canadian Westinghouse Company Limited, which order embodied certain conditions as follows:—

1. That the applicant company, at its own expense, under the supervision of an engineer of the Hamilton and Dundas Street Railway Company, insert a diamond in the track of the said railway company at the said crossing.
2. That the said crossing be protected by a half-interlocking plant; derails to be placed on the line of the applicant company and semaphores on the Hamilton and Dundas Street Railway, three hundred feet from the diamond; and the said derails to be interlocked with the said semaphores.
3. That the normal position of the signals be at "clear" for the trains and cars of the Hamilton and Dundas Street Railway Company.
4. That plans showing the position of the derails and signals, a description of the machinery to be provided, and other necessary details, be submitted for the approval of an Engineer of the Board.
5. That the applicant company bear and pay the whole cost of providing, maintaining and operating the said half-interlocking plant.
6. That the crossing of Aberdeen avenue be constructed in accordance with "The Standard Regulations of the Board Affecting Highway Crossings, as amended May 4, 1910."
7. That the said branch line and spurs therefrom be constructed and completed within three months from the date of this order.

It will be noticed that at that time no question was raised concerning seniority, which was conceded to rest with the Hamilton and Dundas Street Railway Company.

For various reasons unnecessary to dwell upon, nothing was done under the said order (No. 20711) for some years. By letter to the Board under date of September 30, 1919, Mr. E. D. Cahill, K.C., general solicitor for the Toronto, Hamilton and Buffalo Railway Company, made application on behalf of said company, for an extension of time for the construction of the branch line of railway or spur authorized by the above order, and the Canadian Westinghouse Company Limited joined in such request by letter of October 1, 1919.

Notice was given to the parties in interest, and after certain discussion and correspondence in which the city of Hamilton participated, a hearing took place before the Board, and subsequently a further order was made, No. 29063, dated November 26, 1919, reciting the consent upon terms, of the city of Hamilton, also the consent of the Hamilton and Dundas Street Railway Company, and authorizing the Toronto, Hamilton and Buffalo Railway Company to construct, maintain and operate the said spur, subject to additional terms which may be summarized as an indemnification to the city against damage and loss, and an obligation on the part of the Toronto, Hamilton and Buffalo Railway Company to remove the spur and restore the highway on thirty days' notice, unless otherwise authorized by the Board, as well as other conditions similar in effect to those detailed in Order No. 20711.



Shortly afterwards, permission was given to the applicant company by Order No. 21972, dated December 12, 1919, to operate its trains over the crossing on terms that all trains be stopped before proceeding over such crossing and be flagged over the same. This was occasioned by the fact that some delay had occurred in installing the interlocking plant, and this order was intended to be, and was, an interim order to provide for conditions pending such installation. Afterwards and when the said interlocking plant had been installed, the Board by Order No. 29857, dated July 15, 1920, authorized the Toronto, Hamilton and Buffalo Railway Company to operate its trains and cars over said Aberdeen avenue crossing, the normal position of signals and derails to be set "clear" for the Hamilton and Dundas Street Railway and against the movements on the Toronto, Hamilton and Buffalo Railway Company's siding to the Canadian Westinghouse Company's plant, and directed the half interlocking plant at the crossing to be operated by the trainmen of the Toronto, Hamilton and Buffalo Railway Company.

In September, 1926, Mr. Malcolmson, General Manager of the Toronto, Hamilton and Buffalo Railway Company, wrote the Board referring to the provision of Order No. 29172 that all trains should be stopped before proceeding over the crossing and be flagged over the same, and advised that the Hamilton and Dundas Street Railway Company had discontinued its operation a few years previously; that the derails on the Hamilton and Dundas Street Railway Company's tracks had been set against that line and locked in position, and that those on his company's tracks were set for clear movement. Thereupon the Board by its order, No. 38150, dated September 16, 1926, directed that so long as the derails on the Toronto, Hamilton and Buffalo Railway Company's spur at the crossing of Aberdeen avenue were spiked in closed position, and those of the Hamilton and Dundas Street Railway Company were in an open position, the Toronto, Hamilton and Buffalo Railway Company was authorized to operate its trains over the crossing without first being brought to a stop, as provided by previous order, No. 21972.

There is no contest between the parties as to the advisability of the Board authorizing the applicant company to operate its cars over the crossing on Aberdeen avenue, but with the facts as above recited as a background, the Board is asked to say which of the companies, that is to say, the applicant company or the Toronto, Hamilton and Buffalo Railway Company, is senior at the crossing referred to.

It is clear that when, under the authority of the Board's Order No. 20711, the Toronto, Hamilton and Buffalo Railway Company laid its spur tracks into the Canadian Westinghouse Company's plant, crossing Aberdeen avenue and the tracks of the Hamilton and Dundas Street Railway Company, the latter was then unquestionably senior. That is apparent from the terms of the order, and no change in that regard had taken place when Order No. 29063 was made in 1919. It is in evidence and undenied, that the Hamilton and Dundas Street Railway Company ceased operation on Aberdeen avenue for some years, and after such cessation, and upon application to the Board, permission was given to the Toronto, Hamilton and Buffalo Railway Company to operate trains over this spur track without regard to the line of the Hamilton and Dundas Street Railway Company, the derails of which had been spiked in closed position.

It is upon the fact that the Hamilton and Dundas Street Railway Company ceased to operate at this point, that the Toronto, Hamilton and Buffalo Railway Company grounds its claim for seniority. It says that having given up its operation, the Hamilton and Dundas Street Railway Company must be considered as having abandoned its right of crossing: that it was "dead"—to use the expression of counsel for the Toronto, Hamilton and Buffalo Railway Company. On the other hand, it is equally clear that within a very short time after the Hamilton and Dundas Street Railway Company had ceased operations on



Aberdeen avenue, the Hamilton Street Railway Company picked up the work and stepped into its place as far as its charter rights within the city of Hamilton were concerned, and operated its street railway along Aberdeen avenue westward from Queen street, to a point described as being a little to the east of the crossing concerned, presumably to the location of the derail which had been spiked against further eastward movement.

By an agreement entered into between the city of Hamilton and the Hamilton Street Railway Company dated the 25th day of May, 1926, the Hamilton Street Railway Company bound itself to acquire and operate as part of its street railway system, the Hamilton and Dundas Street Railway on Queen street from Herkimer street to Aberdeen avenue, and on Aberdeen avenue from Queen street westerly to the city limits. Thus it is seen that as early as May, 1926, the applicant company had entered into obligations which it afterwards carried out, to utilize this portion of the railway, and to that extent put itself in the place of the Hamilton and Dundas Street Railway Company, whose charter involved the right to run not only within the limits of the city of Hamilton, but along streets and highways in the townships of Barton, Ancaster, West Flamboro and the town of Dundas. Under these facts it will, I think, be seen how unreasonable it is to assert a forfeiture of the charter of the Hamilton and Dundas Street Railway Company, whose rights were as extensive as immediately shown above, on the ground that over and upon a portion of one street in the city of Hamilton it had ceased to operate.

The Board is not in possession of any details as regards the cause or duration of the stoppage on the part of the Hamilton and Dundas Street Railway Company to run its cars along Aberdeen avenue. The first intimation of such stoppage is contained in a letter to the Board dated September 2, 1926, from the General Manager of the Toronto, Hamilton and Buffalo Railway Company advising the Board to that effect, and making request that the conditions of crossing imposed upon the Toronto, Hamilton and Buffalo Railway Company by virtue of the seniority of the Hamilton and Dundas Street Railway Company should cease to operate. Nothing in the nature of an abandonment or forfeiture can be inferred from that fact, and especially as it appears that some three months prior to such notification, arrangements had been made between the city of Hamilton and the Hamilton Street Railway Company to operate the line westwardly to the city limits, covering the crossing in question. What period such stoppage covered is not known to the Board, but it was testified at the last hearing that the applicant company has taken over the running rights of the Hamilton and Dundas Street Railway Company within the city of Hamilton under agreement with the corporation.

This agreement has been confirmed and validated by Act of Assembly, chapter 140, 17 George V (1927). Thereafter the company asked the Board for authority to operate its cars along said line of Aberdeen avenue and across the tracks of the Toronto, Hamilton and Buffalo Railway Company, which had been given authority to operate its trains over the said crossing without their first being brought to a stop, as set out in Order No. 38150. From what was before the Board at the time the application was made on the part of the Hamilton Street Railway Company last summer, the Board's Order No. 43009, dated July 17, 1929, authorized the crossing as requested, and reserved the question of seniority as between the two railway companies for further consideration.

It would have been, perhaps, more satisfactory if fuller particulars had been laid before the Board as to the reason for the cessation of the Hamilton and Dundas Street Railway Company to continue its operation along Aberdeen avenue. There might be certain conditions and circumstances attached to the non-user of a portion of its line, which would affect seniority, but unless such were shown, I do not think the Board is justified in assuming that they have taken place. We have undisputedly before us the fact that the predecessor in

title of the applicant company held seniority over the Toronto, Hamilton and Buffalo Railway Company in regard to the crossing in question over Aberdeen avenue in 1919; that the applicant company has succeeded to the charter rights, privileges and obligations of the Hamilton and Dundas Street Railway Company within the city of Hamilton, and that its agreement with the city of Hamilton, involving the operation of the railway on Aberdeen avenue is ratified by the Legislature of the Province of Ontario. Nothing has been shown indicating an intention on the part of the Hamilton and Dundas Street Railway Company to permanently abandon operation on Aberdeen avenue, and the contrary is apparent on the part of its successor in title, the present applicant. Under all these circumstances it would seem to me to be unreasonable to hold that the question of its seniority has been affected.

It was further contended that certain provisions of the Ontario Railway Act requiring sanction by the Ontario Railway and Municipal Board concerning the acquisition of the property of the Hamilton and Dundas Street Railway Company within the city of Hamilton by the Hamilton Street Railway Company, and the agreement of May 25, 1926, made between the last two named corporations, had not been complied with, and some reliance was placed in that feature of the case. I think the Ontario statute of 1927 validating the agreement between the city of Hamilton and the applicant company has cured whatever default may have taken place as regards the provisions of the Ontario Railway Act, if any such did take place.

From all of the above, it appears to me that the seniority of the applicant company must be affirmed, and order will go accordingly.

Assistant Chief Commissioner McLean concurred.

June 5, 1930.

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ORDER NO. 44883

*In the Matter of the Order of the Board No. 43009, dated July 17, 1929, authorizing the Hamilton Street Railway Company to operate its cars across the tracks of the Toronto, Hamilton & Buffalo Railway Company on Aberdeen Avenue, in the city of Hamilton, province of Ontario, and reserving the question of the seniority of the companies at the said crossing for further consideration.*

File No. 22581.2.

TUESDAY, the 17th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon hearing the matter at the sittings of the Board held in Hamilton, November 22, 1929, in the presence of Counsel for the Hamilton Street Railway Company and the Toronto, Hamilton and Buffalo Railway Company, and what was alleged,—

*The Board declares:* That the Hamilton Street Railway Company is senior at the crossing of the Toronto, Hamilton and Buffalo Railway on Aberdeen avenue, in the city of Hamilton, province of Ontario.

H. A. McKEOWN,  
*Chief Commissioner.*

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*Application of L. Kulesza of Winnipeg, for the construction of a crossing on the C.P.R. tracks, in the municipality of North Kildonan, Manitoba.*

File 36944.

## JUDGMENT

VIEN, DEPUTY CHIEF COMMISSIONER:

Some time in November, 1928, the applicant purchased the northeastern portion of lot No. 89, in the municipality of North Kildonan, province of Manitoba. On the official and registered cadastral plan, four street allowances, one of which is unnamed, and the others are called Robert avenue, Florence and Henrietta streets, are shown as giving access to this lot, which is also diagonally traversed by the Canadian Pacific Railway tracks. The said unnamed street is contiguous to the railway right of way; it runs along the west side thereof, across lots Nos. 87 and 88.

The applicant alleges that, before buying this property, he visited it with his predecessor in title, a certain Joselvitch, who showed him, on the ground, these street allowances; that he then called at the town hall, where the town clerk showed him the official plan and told him that there was an exit from this lot via Henrietta street and Robert avenue; that the land surveyor who had made the plan confirmed these statements, on the strength of which he bought the land; that he found afterwards that these streets were never actually opened or used, and that no public crossing exists on Robert avenue, over the Canadian Pacific Railway's right of way giving access from this lot to the main highway.

He therefore applies, under section 273 of the Railway Act, for an order directing the Canadian Pacific Railway to construct a farm crossing across its right of way, on the divisional line between lots 88 and 89, so as to establish a communication between his property and the unnamed street, hereinabove referred to.

The municipality opposes the application and alleges that these road allowances are only shown on paper; that no buildings or any improvement have been made in this locality; that the municipality has taken title to most of these subdivided lots, and intends to cancel the plans and revert the land to acreage; that Robert avenue, although shown on the plan, on each side of the railway, is not shown as running across the right of way; that it has never been opened as a street nor graded; that the applicant could not now expect the municipality to supply him with an outlet which he should have requested from his vendor as a condition precedent to his purchase.

Mr. Reyecraft, for the railway company, opposed the application and submitted that the railway was built here in 1906, prior to the filing of the subdivision plan on which street allowances are shown southeast and northwest of the railway, but not across the railway right of way; that Robert avenue could not now be opened over the railway without an application from the municipality itself; that as regards the application for a farm crossing on the divisional line between lots 88 and 89, the municipality should, instead, open a right of way across lot No. 90, owned by Mr. Patterson, and immediately adjoining the applicant's property, down to Westgate, where there is a public highway and a public crossing already established; that this would be the proper outlet for the applicant, inasmuch as it is in the direction of Winnipeg, his natural market..

This the municipality refused to do, alleging that it should not be called upon to open new streets and expropriate land to extricate the applicant out of the difficulties in which he finds himself because of his own neglect when he purchased this land, and for which the ratepayers of the municipality should not now be penalized.



Although Mr. Reycraft's suggestion, if carried out, would avoid the necessity of establishing either a public or a farm crossing, in view of the municipality's refusal to accept it, the Board has no power under the Railway Act to compel it to expropriate land for the purpose of a street, and much less for the purpose of giving a private individual an outlet to the highway.

Under section 273 of the Railway Act, the Board may, however, upon the application of any landowner, order the company to provide and construct a suitable farm crossing across the railway, wherever in any case the Board deems it necessary, for the proper enjoyment of his land, and safe in the public interest.

In my opinion the application should be granted, and an order should be made directing the railway company to establish at the expense of the applicant, a farm crossing on the divisional line between lots 88 and 89, across the railway right of way, to give the applicant access to the unnamed street allowance, running along the west side of the railway right of way, and thence to Birds-Hill road, via Robert avenue.

OTTAWA, June 11, 1930.

Commissioner Stoneman concurred.

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ORDER No. 44862

*In the matter of the application of L. Kulesza, of the Rural Municipality of North Kildonan, in the Province of Manitoba, hereinafter called the "Applicant," under Section 273 of the Railway Act, for an Order requiring the Canadian Pacific Railway Company to construct a farm crossing over its track between Lots 88 and 89, as shown on the plan on file with the Board under file No. 36944.*

THURSDAY, the 12th day of June, A.D. 1930.

THOMAS VEIN, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, March 12, 1930, in the presence of counsel for the applicant, the municipality, and the Canadian Pacific Railway Company, and what was alleged; and upon reading the further written submissions filed,—

*The Board orders:* That the Canadian Pacific Railway Company be, and it is hereby, directed to construct a farm crossing, at the expense of the applicant, on the divisional line between lots 88 and 89, in the rural municipality of North Kildonan, over the railway right of way, to give the applicant access to the unnamed street allowance running along the west side of the railway right of way, and thence to Bird's Hill road, via Robert avenue; the said crossing to be constructed in accordance with "The Standard Regulations Affecting Farm Crossings," and to be completed within ninety days from the date of this order.

THOMAS VIEN,

*Deputy Chief Commissioner.*

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*Application of the Transportation Commission of the Maritime Board of Trade, for an Order directing the Canadian National Railways to provide a train service which will permit of passengers arriving at Halifax, N.S., in time for 9 a.m., there being no train from the territory between Elmsdale, N.S., and Windsor Junction which arrives in Halifax for 9 a.m. since change in suburban train service effective April 26, 1930.*

File 27563.115

## JUDGMENT

COMMISSIONER STONEMAN:

The Transportation Commission of the Maritime Board of Trade at a sitting held in the city of Halifax, on Wednesday, June 11, before the Assistant Chief Commissioner and myself, asked that the Canadian National Railway provide a train service between Elmsdale and Windsor Junction, which would permit passengers to get into the city of Halifax by 9 a.m. At the present time there is no suburban train service between Elmsdale and Windsor Junction. In the course of the hearing a request was also made for a noon train service into the city of Halifax and a late afternoon service leaving Halifax.

There is, at present, a battery motor car running between Halifax and Windsor Junction. It was suggested that this battery motor car might make the trip to Elmsdale. The extension of the run for the battery motor car to Elmsdale would necessitate the installation of transformers with suitable voltage for charging the batteries.

Our Chief Operating Officer was instructed, at the close of the hearing, to investigate the feasibility of extending the service of the battery motor car to Elmsdale from Windsor Junction, and in his report to the Board he advises that, after discussion with Mr. Barker, General Superintendent of Transportation for the Canadian National Railways, that he (Mr. Barker) was of opinion that a spare charging set was available at Moncton, but on inquiry there he was advised that while a charging set was available the company had no transformers suitable for voltage on the Avon River Power Company's transmission line. The Power Company advise that their plant could deliver 438 K.V.A. and could deliver sufficient current for charging the car as soon as the transformers could be procured. It would, however, take six weeks to obtain transformers from the makers. A delay of six weeks, to procure the transformers, would not be satisfactory, and consequently would not assist the applicant in its present need for immediate service.

Our Chief Operating Officer was also instructed to investigate the feasibility of rearranging and including the steam train service operated from Dartmouth to Halifax to include Elmsdale to accommodate people engaged in work in the city, which would necessitate their arrival at their respective places of employment to meet the daylight saving time.

After a perusal of the report submitted by the Chief Operating Officer, as well as the written submissions, subsequently filed by Mr. Barker, General Superintendent of Transportation, I would recommend the following disposition upon the facts presented:—

1. That the service of the battery motor car from Windsor Junction to Elmsdale be refused, on the ground that it would take too long to procure and install transformers with suitable voltage and charging sets to make an immediate improvement in the train service;

2. That the noon train service into the city of Halifax and the late afternoon service leaving Halifax referred to at the sittings be not entertained.

3. That the following trains service, as recommended in subsequent submissions filed by Mr. Barker, and concurred in by our Chief Operating Officer,



as set out in the following schedule, be put into effect, as a means of meeting the needs of the parties concerned, who have to arrive in Halifax on daylight saving time:—

*Storage Battery Car Service:*

No. 170—Lv. Windsor Junction.. . . . .	5.55 a.m.
Ar. Halifax.. . . . .	6.45 a.m.

NOTE.—Connects at Windsor Junction with No. 225 from Dartmouth.

*Steam Train Service:*

No. 225—Lv. Dartmouth.. . . . .	5.00 a.m.
Ar. Windsor Jct.. . . . .	5.40 a.m.
Lv. Windsor Jct.. . . . .	5.45
Ar. Elmsdale.. . . . .	6.20
No. 172—Lv. Elmsdale.. . . . .	6.25
Lv. Windsor Jct.. . . . .	7.10
Ar. Halifax.. . . . .	7.50

I would suggest that order issue, giving effect to change, during the summer months, of the service as above outlined, so that the change will appear in the new time table to be issued 29th instant.

OTTAWA, June 16, 1930.

Assistant Chief Commissioner McLean concurred.

ORDER No. 44884

*In the matter of the application of the Transportation Commission of the Maritime Board of Trade for an Order to provide a train service leaving Elmsdale at 6.30 a.m., arriving at Halifax at 7.50 a.m., during the daylight saving period.*

File No. 27563.115

TUESDAY, the 17th day of June, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Halifax, June 11, 1930, in the presence of counsel for the Transportation Commission of the Maritime Board of Trade and the Canadian National Railways, and what was alleged; and upon the report and recommendation of its Chief Operating Officer,—

*The Board orders:* That the Canadian National Railways be, and they are hereby, required to put into effect from June 29 to September 14 inclusive, the following train service, namely:—

*Storage Battery Car Service:*

No. 170—Leave Windsor Junction.. . . . .	5.55 a.m.
Arrive Halifax.. . . . .	6.45 a.m.

To connect at Windsor Junction with No. 225 from Dartmouth.

*Steam Train Service:*

No. 225—Leave Dartmouth.. . . . .	5.00 a.m.
Arrive Windsor Junction.. . . . .	5.40 a.m.
Leave Windsor Junction.. . . . .	5.45 a.m.
Arrive Elmsdale.. . . . .	6.20 a.m.
No. 172—Leave Elmsdale.. . . . .	6.25 a.m.
Leave Windsor Junction.. . . . .	7.10 a.m.
Arrive Halifax.. . . . .	7.50 a.m.

S. J. McLEAN,

*Assistant Chief Commissioner.*



## GENERAL ORDER No. 485

*In the matter of the General Order of the Board No. 483, dated March 5, 1930, prescribing a regulation to be adopted by railway companies subject to the jurisdiction of the Board in the operation of grade crossings protected by automatic signals or automatic gates, after a train has passed a crossing and makes a back-up movement over the crossing.*

File No. 25434.5

FRIDAY, the 30th day of May, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
 S. J. McLEAN, *Assistant Chief Commissioner.*  
 THOMAS VIEN, K.C., *Deputy Chief Commissioner.*  
 C. LAWRENCE, *Commissioner.*  
 HON. T. C. NORRIS, *Commissioner.*  
 J. A. STONEMAN, *Commissioner.*

Whereas the railway companies, by the Board's Circular No. 228, dated April 3, 1930, were asked to show cause why, in order to remove any doubt or ambiguity as to where the end of the circuit comes, arrangements should not be made to establish a definite mark, for example, a small finger-board with the words, "End of block" or "End of circuit";

And upon reading the submissions filed on behalf of the Railway Association of Canada, the Essex Terminal Railway Company, the Algoma Central and Hudson Bay Railway Company, Rutland Railroad Company, Canadian National Electric Railways, the Grand River Railway Company, New York Central Railroad Company, and the Great Northern Railway Company; and upon the report and recommendation of the Chief Operating Officer of the Board,—

*It is ordered:* That the said General Order No. 483, dated March 5, 1930, be, and it is hereby, amended by adding at the end thereof the words, "the end of the circuit at such crossings to be marked by a small finger-board with the words 'End of block' or 'End of circuit.'"

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44810

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 4th day of June, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
 S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the toll published in Supplement No. 3 to Tariff C.R.C. No. E-1245, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44817

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.8

WEDNESDAY, the 4th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll published in Tariff C.R.C. No. 38, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Tariff C.R.C. No. 38, approved herein, is 4 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44861

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

THURSDAY, the 5th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

*It is ordered:* That the tolls published in Supplement No. 25 to Tariff C.R.C. No. E-1240, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44864

*In the matter of the application of the James Goldie Company, Limited, of Toronto, Ontario, for an Order directing the Canadian National Railways to accord to the Applicant arrangements for stop-off at Montreal, Quebec, and Moncton, New Brunswick, for warehousing and reassembling, and privileges of reshipping to points in Quebec and the Maritime provinces at the balance of the through rate, on all shipments of grain products from mills at interior points in Ontario, upon the same basis of equality as to rates, privileges, and transportation services as is now accorded and allowed under above conditions by the said Railway Company to shipments of ex-lake grain products from Ontario Bay ports to Montreal and other points in Quebec and the Maritime provinces:*

File No. 8641.57

THURSDAY, the 5th day of June, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
 Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 25, 1930, in the presence of counsel for and representatives of the applicant, the Canadian National Railways, and the Canadian Pacific Railway Company, and what was alleged; and upon the report of the Chief Traffic Officer of the Board,—

*It is ordered:* That item No. 103 in Canadian Pacific Railway Tariff C.R.C. No. E-4126, and item No. 115C in Supplement No. 50 to Canadian National Railways Tariff C.R.C. No. E-1205, be amended, effective not later than June 30, 1930, to apply also on shipments of grain products, the product of ex-lake grain shipped from lake ports to interior milling points east or south thereof and reshipped from such interior points under milling-in-transit arrangements.

S. J. McLEAN,  
*Assistant Chief Commissioner,*

## ORDER No. 44863

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

THURSDAY, the 12th day of June, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*  
 C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 13 to Tariff C.R.C. No. E-1233 and in Supplement No. 23 to Tariff C.R.C. No. 1234, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

THOMAS VIEN,  
*Deputy Chief Commissioner.*



## ORDER No. 44874

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.13

MONDAY, the 16th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

1. *The Board orders:* That the tolls published in item 47 of Supplement No. 35 to tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 47 of Supplement No. 35 to Tariff C.R.C. No. 813, approved herein, are as follows:—

When originating at—	Rates in cents per 100 pounds
New Glasgow, Nova Scotia.. . . . .	22
Sydney, Nova Scotia.. . . . .	16

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 44875

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.2

MONDAY, the 16th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:* That the toll published in Supplement No. 20 to Tariff C.R.C. No. E-1255, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## CIRCULAR No. 229

June 11, 1930.

*Re General Order No. 361, Reporting of Accidents*

File No. 45

The Operating Department calls attention to a practice which is developing under General Order No. 361 where standing trains or standing equipment is concerned, the railway companies taking the position that the general order requires accidents where train or equipment is actually in motion only to be reported; the department contending many of the occurrences are the result of transportation, although at the moment the train or engine is at rest; and that faulty equipment may be the cause of the occurrence.

Railway companies are required to show cause why reports of accidents to employees, passengers or others, occurring while the train or equipment is at rest, as described above, should not be reported, so that all matters in connection therewith can be given the benefit of investigation.

By order of the Board.

A. W. CARTWRIGHT,  
*Secretary.*

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
BOARD OF RAILWAY COMMISSIONERS, FOR THE  
MONTH OF APRIL, 1930

Railway accidents .....136, involving 21 persons killed and 130 injured  
Railway accidents at highway crossings .... 17, involving 9 persons killed and 24 injured

	Killed	Injured
Passengers . . . . .	—	20
Employees . . . . .	9	93
Others. . . . .	21	41
Totals. . . . .	30	154

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF NOVA SCOTIA

Accidents

- 1 Automobile—Gates unattended. Licence N.S. C-12572.

PROVINCE OF NEW BRUNSWICK

- 1 Automobile—Carelessness of truck driver. Licence N.B. X-2217.

PROVINCE OF QUEBEC

- 1 Automobile—Carelessness of truck driver. Licence Q. L-3064.  
3 Automobile—Failed to stop for crossing. Licences, Quebec H-23942; 86357; F-23411.  
1 Pedestrian—Crawled under lowered gates.

PROVINCE OF ONTARIO

- 2 Automobile—Auto ran into side of engine. Licences, N.Y. 7 B-44-67; Ont. C.H.-494.  
1 Automobile—Carelessness of auto driver. Licence Ont. JF-543.  
1 Automobile—Excessive speed of auto. Licence Ont. 6-M-28-45.  
1 Automobile—Licence Ont. IV-711.  
1 Auto-bus—Licence Ont. 3549-C.

PROVINCE OF MANITOBA

- 1 Sleigh.

PROVINCE OF SASKATCHEWAN

- 1 Automobile—Carelessness of truck driver. Licence Sask. T-4802.

PROVINCE OF ALBERTA

- 1 Automobile—Carelessness of auto driver. Licence Alta. 34051.

PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—Carelessness of truck driver. Licence B.C. 60-279.

Of the 17 accidents at highway crossings, 3 occurred at protected crossings and 14 at unprotected crossings. Nine of the accidents occurred during day-light hours and eight during the night.

OTTAWA, June 23, 1930.



The Board of  
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XX

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*Application of the Municipal Corporation of the Township of York, Ont., for an Order requiring the construction of an overhead bridge over tracks and right of way of the Canadian National Railways at a point where the northern division of said railway crosses Eglington Avenue, Township of York.*

JUDGMENT

McLEAN, Assistant Chief Commissioner:

This matter is concerned with an application made by the Township of York for an order apportioning the cost of proposed bridge over the Canadian National tracks (Newmarket Branch) at Eglington avenue and which was heard at Toronto on November 18, 1929.

By consent, the matter stood for further negotiations. The Board now has before it a memorandum signed on behalf of the parties. There is attached thereto a general plan which is approved by them and is satisfactory to the Board's Engineering Department. The question of contribution from the Grade Crossing Fund is raised. The following is excerpted from the memorandum:—

"The bridge which it is proposed to replace was built by the Canadian National Railways many years ago about 200 feet south of the road allowance of the concession line known as Eglington avenue, and at a point where there was no road at either end of the bridge, traffic, therefore, had to trespass for many years over private property to use the bridge.

"The present wooden bridge now being at the end of its life, it is proposed to construct an up-to-date concrete bridge as per plans attached, at an estimated cost of \$74,100, at a point midway between the present bridge and the concession line known as Eglington avenue. This is the most economical site and will result in a considerable saving to the Canadian National Railways as well as the township.

"The concession line known as Eglington avenue has never been closed and it is quite possible for the township to so grade the road as to get a grade crossing with the Canadian National Railways tracks

with easy approach grades at a very reasonable cost but as this would be a retrograde step and we think futile on our part to ask your honourable body to give its consent.

"A bridge built on the site chosen will be more economical by far than at a site on Eglinton avenue concession line as to cost of bridge proper grading, filling, property and property damage for several hundred feet each way from the bridge.

"Eglinton avenue is an original concession line which extends across York county from east to west and passes through East York township, the town of Leaside, the city of Toronto, the village of Forest Hill, and the township of York and is now a tourist highway and, therefore, is used by a considerable volume of traffic other than which originates in this municipality."

By Order No. 32668, of May 7, 1923, the Board dealt with a situation involving subway protection on Bloor street east (Danforth avenue extended.) The extension in question was an original road allowance which had never been closed, and the Board held that the subway protection in question came within the scope of the Grade Crossing Fund; and order was made accordingly. Reference may also be made to Board's Order No. 43790, of November 8, 1929, whereunder contribution was made from the Grade Crossing Fund in aid of the reconstruction of bridge over the tracks of the Canadian Pacific Railway at Chapleau, Ont.

The present situation is parallel; and I am of opinion that a grant may be made from the Grade Crossing Fund, subject to the statutory limitation. The cost of the road surface on the bridge and maintenance of same will be on the municipality.

It is represented, on behalf of the applicants, that the question of the distribution of the balance of cost can be worked out by mutual arrangement between the railway company and the township of York. This portion of the distribution will, therefore, stand for arrangement by mutual consent. If, however, any question in regard to distribution arises, the action which is now being taken is without prejudice to such application, if any, as may be made by either or both of the parties.

Chief Commissioner McKeown concurred.

June 25, 1930.

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ORDER No. 44936

*In the matter of the application of the Municipal Council of the Township of York, in the Province of Ontario, hereinafter called the "Applicant," under Section 256 of the Railway Act, for an Order requiring the construction of an overhead bridge over the tracks and right of way of the Canadian National Railways, at a point where the Northern Division of the said railway crosses Eglinton Avenue, in the Township of York, as shown on the plan on file with the Board under file No. 36208.*

THURSDAY, the 26th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, November 18, 1929, in the presence of counsel for the applicant and the railway company, and what was alleged; and upon the report of an Engineer of the Board,—



*It is Ordered:*

1. That the Canadian National Railways be, and they are hereby, required to construct an overhead bridge over their tracks and right of way at a point where the said railway crosses Eglington avenue, in the township of York, province of Ontario, as shown on the plan on file with the Board under file No. 36208; detail plans to be filed for the approval of an Engineer of the Board.

2. That forty per cent of the cost of constructing the said bridge (not exceeding the sum of \$100,000) be paid out of the Railway Grade Crossing Fund, the cost of the road surface on the bridge and the maintenance thereof to be paid by the applicant; the question of the distribution of the remainder of such cost to be agreed upon between the parties, and in the case of any disagreement as to such distribution, this order to be without prejudice to such application, if any, as may be made by either or both of the said parties.

H. A. McKEOWN,  
*Chief Commissioner.*

*Application of W. R. Simpson, of Glenora, Manitoba, for the construction of an adequate station, with proper living quarters for the agent in charge, at Glenora, on the Canadian National Railways.*

(File No. 22748)

## JUDGMENT

VIEN, *Deputy-Chief Commissioner;*

The applicant alleges that Glenora is an important and growing municipality of southern Manitoba, in the immediate vicinity of a very popular summer resort, which it serves; that some twenty-four years ago, the Canadian National Railway established a station there, and later, as their business developed, appointed a regular agent; that the station facilities have remained the same as when the railway was built and have become obsolete and inadequate; that they consist of a box-car, with side walls made of only one ply of lumber, a rubberoid roof, and no ceiling; that this provisional building is not windproof and lets out whatever heat it is possible to produce inside with the limited heating facilities available; that it is 30 feet long by 10 feet wide, is divided into sleeping quarters for the agent, an office, and a general waiting-room ten by eleven; that even that small space reserved for the public is over-crowded with two benches, a stove, egg-cases, milk and cream cans, and perishable and express goods often put in there to be kept from freezing; that it is built some three or four feet from the ground, on blocks, to prevent it from floating away, it being encircled with water; that, in wet weather, there is no access to it except by going up the road allowance and walking down on the railway tracks; that it is of an ugly appearance and is a credit neither to the railway nor the municipality; that the only freight shed provided is an old box-car.

At the hearing, Mr. Napier, the railway company's superintendent, admitted that the conditions were substantially as alleged (Record vol. 556, p. 1231), but submitted that the cheapest standard building which they had was a fourth class station costing approximately \$6,700; that the earnings at this point did not justify such a large expenditure of money; that the present station was quite in line with the type of stations in use at points of similar importance in western Canada.

An analysis of the company's earnings at Glenora, for the years 1927-1928-1929, shows: Freight received, \$14,470; freight forwarded, \$48,198; total, \$63,668; or an average of \$21,222.66 per year, exclusive of passenger, express and telegraph earnings. This included the year of 1929 during the fall of which grain was not moved in as large quantities as usual. For the years 1927 and 1928, tolls collected at Glenora, on freight alone, exceeded \$24,000 a year.



Under such circumstances, the company should certainly provide better station facilities for its patrons, and as was shown at the hearing this could be done without involving an expenditure of \$6,000. It appears that the space originally reserved for the public has been cut down to provide lodging quarters for the agent; that if the partitions which have been erected were removed, the space reclaimed could be used for a waiting-room and an express room; that if the present building were moved 200 feet further west, it would stand on much higher and drier ground.

In my opinion the railway company should be directed, within ninety days, to move this station two hundred feet west of its present location, and to board it around its foundation, so as to keep out the wind and water; to build an adequate roadway giving proper communication between the station and the public highway; to wainscot the building and double sheet the roof inside; to remove the partitions which have been erected to provide quarters for the agent and to convert the space into a waiting-room and an express room; to keep at all times the station clean, properly heated and lighted.

These arrangements should satisfactorily take care of the situation for the present, it being always open to the public again to apply to this Board if they proved to be insufficient.

Ottawa, June 25, 1930.

Commissioner Stoneman concurred.

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ORDER NO. 44957

*In the matter of the application of E. R. Simpson, of Glenora, Manitoba, for an order directing the Canadian National Railways to construct an adequate station, with proper living quarters for the agent in charge, at Glenora.*

File No. 22748

SATURDAY, the 28th day of June, A.D. 1930.

THOMAS VIEN, K.C.,  
*Deputy Chief Commissioner.*

J. A. STONEMAN,  
*Commissioner.*

Upon hearing the application at the sittings of the Board held in Brandon on March 13, 1930, in the presence of counsel for and representatives of the Canadian National Railways and the Municipality of Glenora, and what was alleged; and upon the report and recommendation of its Chief Operating Officer—

*The Board Orders:* That, within ninety days from the date of this order, the Canadian National Railways be, and they are hereby, directed to move the station building two hundred feet west of its present location and to board it around its foundation, so as to keep out the wind and water; to build an adequate roadway giving proper communication between the station and the public highway; to wainscot the building and double sheet the roof inside; to remove the partitions which have been erected to provide quarters for the agent, and to convert the space into a waiting-room and express room; and to keep at all times the station clean, properly heated, and lighted.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER NO. 44888

*In the matter of the application of the Algoma Eastern Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of by-law dated May 28, 1930, authorizing the General Freight Agent of the applicant from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight traffic upon the railway of the Applicant Company and the General Passenger Agent from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of passenger traffic upon the railway of the Applicant Company.*

Case No. 473

WEDNESDAY, the 18th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C.,  
Chief Commissioner.

S. J. McLEAN,  
Asst. Chief Commissioner.

Upon the report and recommendation of its Assistant Chief Traffic Officer,—

*The Board Orders:* That the said by-law, dated May 28, 1930, authorizing the general freight agent of the applicant company from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight traffic upon the railway of the applicant company, and the general passenger agent from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of passenger traffic upon the railway of the applicant company, on file with the Board under case No. 473, be, and it is hereby, approved.

H. A. McKEOWN,  
Chief Commissioner.

## ORDER NO. 44898

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

SATURDAY, the 21st day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C.,  
Chief Commissioner.

S. J. McLEAN,  
Asst. Chief Commissioner.

*The Board Orders:* That the tolls published in Supplement No. 12 to tariff C.R.C. No. E-1247, and in Tariff C.R.C. No. E-1597, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
Chief Commissioner.

## ORDER NO. 44928

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Bromhead Westerly Branch, mileage 26.31 to 45.13 (Lake Alma to Minton).*

File No. 34159.17

WEDNESDAY, the 25th day of June, A.D. 1930.

Hon. H. A. McKEOWN, K.C.,  
*Chief Commissioner.*

S. J. McLEAN,  
*Asst. Chief Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board Orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its Bromhead Westerly Branch, mileage 26.31 to 45.13 (Lake Alma to Minton).

H. A. McKEOWN,  
*Chief Commissioner.*

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## ORDER NO. 44947

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Lloydminster Northeasterly Branch, mileage 0 to 24.5.*

File No. 35873.9

WEDNESDAY, the 25th day of June, A.D. 1930.

S. J. McLEAN,  
*Asst. Chief Commissioner.*

Hon. T. C. NORRIS,  
*Commissioner.*

J. A. STONEMAN,  
*Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*It is Ordered:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Lloydminster Northeasterly Branch, mileage 0 to 24.5.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER NO. 44980

*In the matter of tariffs, and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

THURSDAY, the 3rd day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board Orders:*

1. That the toll published in item 105 of Supplement No. 21 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 105 of Supplement No. 21 to Tariff C.R.C. No. 817, approved herein, is 6 cents per 100 pounds.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER NO. 44981

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

THURSDAY, the 3rd day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board Orders:*

1. That the toll published in item 101 of Supplement No. 37 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 101 of Supplement No. 37 to Tariff C.R.C. No. 813, approved herein, is 10 cents per 100 pounds.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

ORDER NO. 44982

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

THURSDAY, the 3rd day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board Orders:*

1. That the tolls published in item 17 of Supplement No. 36 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved; subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 17 of Supplement No. 36 to Tariff C.R.C. No. 813 approved herein, are as follows:—

To	Rate in cents per hundred pounds
Middleton, Nova Scotia.. . . . .	8
Bridgetown, Nova Scotia.. . . . .	8
Yarmouth, Nova Scotia.. . . . .	10

THOMAS VIEN,  
*Deputy Chief Commissioner.*

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The Board of  
**Railway Commissioners for Canada**

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Vol. XX

Ottawa, August 1, 1930

No. 10

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

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GENERAL ORDER No. 486

*In the matter of the General Order of the Board No. 102, dated February 17, 1913, prescribing the "Regulations With Respect to Railway Safety Appliance Standards" for use on railways subject to the jurisdiction of the Board.*

File No. 22223.5.

MONDAY, the 7th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon reading the submissions filed on behalf of the Canadian National Railways, and the report and recommendation of the Chief Operating Officer of the Board,—

*It is ordered:* That the "Regulations With Respect to Railway Safety Appliance Standards," approved under the said General Order No. 102, dated February 17, 1913, be, and they are hereby, amended by adding thereto, under the heading, "Tenders of Vanderbilt Type," the following provision, namely:—

"On tenders of the Vanderbilt type, with three filling-holes, there shall be a handrail four inches above the level of the top running-board not less than one inch in diameter, extending from the present hand-rail, which extends from the coal space to within twenty inches of the first filling-hole, to the rear end of the tender at each side of the top running-board."

THOMAS VIEN,  
*Deputy Chief Commissioner.*



## ORDER No. 45009

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13.

MONDAY, the 7th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*C. LAWRENCE, *Commissioner.**The Board orders:*

1. That the toll published in item 53 of Supplement No. 17 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act; the Dominion Atlantic Railway proportion, to be reported at 15·3 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 53 of Supplement No. 17 to Tariff C.R.C. No. 812, approved herein, is 19·1 cents per 100 pounds.

THOMAS VIEN,

*Deputy Chief Commissioner.*

## ORDER No. 45010

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2.

MONDAY, the 7th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 32 to Tariff C.R.C. No. E-1237; in Supplement No. 19 to Tariff C.R.C. No. 1243, and in Tariff C.R.C. No. 1604, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

THOMAS VIEN,

*Deputy Chief Commissioner.*

## ORDER No. 45016

*In the matter of the application of the city of Quebec, for an Order authorizing the operation of a tramway service under the tunnel of the Canadian National Railways on First Avenue, Limoilou, (Charlesbourg Road Tunnel), Quebec, in the Province of Quebec.*

File No. 26782.21.1.

TUESDAY, the 8th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Quebec city on June 4, 1930, in the presence of counsel for the city of Quebec, the Que-

bec Railway, Light and Power Company, Limited, and the Canadian National Railways, and what was alleged,—

*The Board orders:*

1. That the Quebec Railway, Light & Power Company, Limited, be, and it is hereby, directed to extend its street railway system over Charlesbourg road to the city limits, in the city of Quebec.

2. That the Quebec Railway, Light and Power Company, Limited, be, and it is hereby, authorized to pass its street railway system through the tunnel under the tracks of the Canadian National Railways, at mileage 2·3 St. Lawrence Subdivision, Montreal Division, Quebec District, in the province of Quebec.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

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ORDER No. 45023

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 348 of the Railway Act, for approval of its proposed new standard contract form for one way inter-line tickets.*

File No. 964.5.

TUESDAY, the 8th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

Upon reading the submissions filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant company's proposed new standard contract form for one way inter-line tickets, showing the following conditions, namely,—

1. This company assumes no responsibility beyond its own line.
2. This ticket is not transferable and will be void if altered in any way after issue by this company or if presented for passage after date punched in margin; coupons are void if detached.
3. No stop-over will be allowed unless specially provided for by local regulations of lines over which this ticket reads.
4. If this ticket and its coupons bear "L" punch cuts, this indicates that it was sold at a reduced fare and will not be good for passage after date so punched in margin.
5. No participating carrier will assume any liability on baggage except in accordance with regulations approved by the Board of Railway Commissioners for Canada or set forth in its published tariffs.
6. This ticket is sold subject to passenger meeting immigration requirements of the United States before entering that country.

be, and it is hereby, approved.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER No. 45027

*In the matter of the application of the Wabash Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of by-law dated June 24, 1930, passed by the Board of Directors of the Applicant Company, authorizing L. R. Nowotny, Chief of Tariff Bureau, to prepare and issue tariffs of the freight tolls to be charged on the lines of the Applicant Company within the Dominion of Canada, for all tariffs carried by the Applicant Company, and to specify the persons to whom, the places where, and the manner in which the said freight tolls shall be paid, on file with the Board under Case No. 3088.*

TUESDAY, the 8th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said by-law be, and it is hereby, approved; and that Order No. 42425, dated April 8, 1929, made herein, be, and it is hereby, rescinded.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER No. 45018

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Suffield-Blackie Branch, mileage 124.65 to 147.0. File No. 21984.29.*

WEDNESDAY, the 9th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, and the filing of the necessary affidavit—

*It is ordered:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its Suffield-Blackie Branch, from mileage 124.65 to 147.00.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER No. 45024

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2.

WEDNESDAY, the 9th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

1. *The Board orders:* That the tolls published in Supplement No. 30 to Tariff C.R.C. No. E-1235 and in Supplement No. 21 to Tariff C.R.C. No. E-1255, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

THOMAS VIEN,  
*Deputy Chief Commissioner.*



## ORDER No. 45025

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12.

WEDNESDAY, the 9th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*C. LAWRENCE, *Commissioner.**The Board orders:*

1. That the tolls published in item 95 of Supplement No. 28 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal rates which, but for the said Act, would have been effective in lieu of those published in the said item 95 of Supplement No. 28 to Tariff C.R.C. No. E-4312, are the fifth class rates in effect prior to July 1, 1927.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER No. 45040

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 14th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*C. LAWRENCE, *Commissioner.**The Board orders:*

1. That the toll published in item 26 of Supplement No. 2 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 26 of Supplement No. 2 to Tariff C.R.C. No. 851, approved herein, is 21½ cents per 100 pounds.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER No. 45041

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 14th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*C. LAWRENCE, *Commissioner.**The Board orders:*

1. That the toll published in item 128 of Supplement No. 38 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under sec-

tion 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 128 of Supplement No. 38 to Tariff C.R.C. No. 813, approved herein, is 20 cents per 100 pounds.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

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ORDER No. 45044

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Acme Northwesterly Branch, from mileage 0·0 to 28·9.*

File No. 36064.10

TUESDAY, the 15th day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*  
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, and the filing of the necessary affidavit,—

*It is ordered:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Acme Northwesterly Branch, from mileage 0·0 to 28·9.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

---

ORDER No. 45048

*In the matter of the Order of the Board No. 44936, dated June 26, 1930, requiring the Canadian National Railways to construct an overhead bridge over their tracks and right of way at a point where the said railway crosses Eglinton Avenue, in the Township of York, Province of Ontario.*

File No. 36208.

WEDNESDAY, the 16th day of July, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed, and the report and recommendation of its Assistant Chief Engineer,—

*The Board orders:* That the said Order No. 44936, dated June 26, 1930, be, and it is hereby, amended by striking out the words "Canadian National Railways," "they are," and "their," in the first and second lines of paragraph 1 of the said Order, and substituting therefor the words "applicant," "it is," and "Canadian National Railways" respectively; and by inserting after the word "Ontario" in the fifth line of the said paragraph 1 the words "and to close the original concession line known as Eglinton avenue."

S. J. McLEAN,  
*Assistant Chief Commissioner.*





DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS—*Con.*

## PROVINCE OF SASKATCHEWAN

## Accidents

- 2 Automobile—Carelessness of auto driver. Licences, Sask. 66289; 41-714.
- 1 Automobile—Stalled on crossing. Licence Sask. 37046.
- 1 Automobile—(Licence number not given.)

## PROVINCE OF ALBERTA

- 2 Automobile—Carelessness of auto driver. Licences, Alta. D-640; 9746.

Of the 29 accidents at highway crossings, 9 occurred at protected crossings and 20 at unprotected crossings. Twenty-one of the accidents occurred during day-light hours and eight during the night.

OTTAWA, July 22, 1930.

# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

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*Consideration of the matter of closing the private crossing east of Douglas Station, Manitoba, at mile 121.8, on the Carberry Subdivision of the Canadian Pacific Railway.*

File 30762.115

### JUDGMENT

VIEN, DEPUTY CHIEF COMMISSIONER:

At mile 121.8 of the Carberry subdivision of the Canadian Pacific Railway, immediately east of Douglas station, in the province of Manitoba, there is a private crossing which has been freely used by the public during the last forty or fifty years.

On the 2nd of October, 1929, whilst the Canadian Pacific Railway Extra-West freight train No. 1021 was passing at this point at a rate of 30 miles an hour, an automobile ran into the side of the locomotive; the motor car was swung around and thrown away. Two persons were injured, who died shortly thereafter.

It was revealed, at the investigation, that the automobile driver was short-sighted, deaf and inattentive; that the engine driver had blown the whistle before entering the yard, and that the bell was ringing at the moment of the accident. Outside witnesses corroborated these facts. The Board's inspector found that none of the train crew or of the railway employees were to blame. In his report he pointed out, however, that, although this is a private crossing, it is used freely by the public as a short-cut across the station grounds, and that, in his opinion, the Board should consider the advisability of closing it, there being a standard public highway crossing a few hundred yards away, at the east end of the station yard.

The railway company concurred in these conclusions, but the municipality of Elton strongly urged that the closing of this crossing could not be ordered without serious inconvenience to the population, who had been using it for at least half a century, during which this was the only accident of record, an accident entirely due to the physical disabilities and the carelessness of the motor car driver, for which the community should not be penalized.

The evidence shows that this crossing is not particularly dangerous. It has been freely used by the public since the construction of the railway. There are gates and a private crossing sign, but the gates are kept open and the sign

is disregarded. The railway company has always maintained the approaches and the planking, and has never attempted to exclude the public. The view is quite good, except perhaps in the direction of the station building, which stands a short distance to the west. There is a public crossing at the east end of the station yards, but it is several hundred yards away, and as there is a large acreage of land under cultivation south of the station, if the crossing in question herein were closed, as suggested by the Board's inspector and the railway company, farmers living in that district would have to travel a long way around and would be seriously inconvenienced.

By a resolution on file, the municipal council now requests an order declaring this a public crossing, to all intents and purposes.

The question to be determined is therefore whether it is expedient to change this private crossing into a public one, or to close it.

On improved and much travelled highways, level crossings are no doubt a source of danger, and this Board, as a rule, looks with disfavour upon the establishment of any new ones. Section 256 of the Railway Act, however, provides that the convenience of the public must also be considered.

Having due regard to all that is involved, in my opinion, the closing of this crossing, which has been in operation for fifty years or so, would be of serious inconvenience to the public. It should therefore be declared a public crossing, and the railway company should be directed to maintain it hereafter, in conformity with the public crossing standards set up by the Board.

In ordinary circumstances, the cost of construction and maintenance of a newly established public crossing should be at the expense of the municipality, as being a part of its roadways. But, in this case, if this crossing was not heretofore legally opened to the public, it has been a public crossing *de facto* for half a century.

As early as November, 1907, in a case of the village of Weston and the Canadian Pacific and the Grand Trunk Railways, Chief Commissioner Killam said the following:—

“While the railway companies put up warning notices and occasionally closed gates on each side of their lines, thereby preventing any inference of intention to dedicate these portions of their lines to public use as a highway crossing, they took no effective steps to put a stop to their actual use by the public for this purpose, and the public have used the same for many years. Such a course of proceeding is highly objectionable. Railway companies should either fence off their lines and take steps to prevent the unlawful crossing of their tracks, or allow public highways to be placed across them where the public interests demand such a course. In tacitly conniving at these trespass crossings while endeavouring to protect themselves from liability in respect of the same, they are maintaining a public danger and ought not to expect the same consideration of their interests as in cases where it is sought to construct entirely new highway crossings over their railways.” (Page 231 Railway Commissioners' Report, 1909.)

The circumstances herein are the same as in the case above quoted. In my opinion, the cost of construction and maintenance should be at the expense of the railway company. The question of special protection, if any becomes necessary, should be dealt with on its merit, when it arises.

But, some eleven or twelve hundred feet away, at the east end of Douglas station yards, on a public road allowance, there is another crossing which, in the opinion of even the reeve of the municipality, Mr. Boles, is much more dangerous, because of the shortness of the sight lines. (Record, Vol. 556, p. 1199.) This crossing is not very much used by the public, the preponderance of the traffic passing at the crossing that has just been hereinabove dealt with.



The territory to the south to which the public road allowance leads is swampy and inaccessible. The road allowance has, for that reason, been diverted in a westerly direction, south of and alongside the railway right of way, and it connects, at a certain distance farther west, with another municipal road.

The private crossing above referred to being converted into a public crossing, the east end crossing could easily be closed as a public crossing without any serious inconvenience to the public. It should, however, be left open as a farm crossing for the utility of the two farmers who live in its vicinity.

In my opinion, the public crossing at the east end of Douglas station yards should be closed as such and converted into a farm crossing for the utility of the two farmers living in the immediate vicinity thereof, and the railway company should erect a fence on each side of its railway right of way, and put therein gates and farm crossing signs. An order will be made accordingly.

OTTAWA, June 17, 1930.

Commissioner Stoneman concurred.

ORDER No. 45111

*In the matter of the consideration of the question of the closing of the private crossing over the Canadian Pacific Railway east of Douglas Station, in the Province of Manitoba, mileage 121·8 Carberry Subdivision.*

File No. 30762.115

SATURDAY, the 28th day of June, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Brandon, March 13, 1930, in the presence of counsel for and representatives of the municipality of Douglas Station, residents on the south side of the railway, and the railway company, and what was alleged; and upon reading the application of the rural municipality of Elton for an order making the said private crossing a public crossing,—

*The Board orders:* That the Canadian Pacific Railway Company be, and it is hereby, directed, at its own expense, to construct and maintain a public crossing over its railway east of Douglas Station, in the province of Manitoba, mileage 121·8, Carberry Subdivision; the existing public crossing at the east end of Douglas Station yards to be closed as such and converted into a farm crossing, in accordance with the Standard Regulations of the Board Regarding Farm Crossings; the new public crossing to be constructed in accordance with the Standard Regulations of the Board Affecting Highway Crossings.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER No. 45113

*In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, for authority to operate over their line revision across Canoe River, in the Province of British Columbia, between mileages 80·24 and 80·75, Albrede Subdivision, a distance of 0·52 miles.*

File No. 29263.4

TUESDAY, the 22nd day of July, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicants be, and they are hereby, authorized to operate over the line across Canoe river between mileages 80·24 and 80·75, Albrede Subdivision, in the province of British Columbia, a distance of 0·52 miles.

THOMAS VIEN,  
*Deputy Chief Commissioner.*



The Board of

# Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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## *Dangerous Practices of Motorists, Drivers of Other Vehicles, and of Pedestrians at Railway Crossings*

Files Nos. 45.8.1; 45.8.2; 45.8.3.

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from April 1, 1930, to July 31, 1930, show forty-three cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from January 1, 1930, to March 31, 1930, and (Eastern Lines) from February 1, 1930, to April 30, 1930, show a total of sixty-three cases.

The Toronto, Hamilton and Buffalo lines from April 1, 1930, to July 31, 1930, show eight cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplors this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—



## CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices	
1930					
April 1	6.40 p.m.	Cote St. Paul Road, Lachine Canal bank.	Que. H. 3581	Ignoring stop signals; passing over crossing when train approaching.	
"	1	18.40 K.	Public Crossing; M.P. 52-8; Drumheller Subd.	34051..... Attempting to cross before train; auto struck some rails lying alongside of track, stalling engine, and auto struck by engine; 3 occupants slightly injured.	
"	5	10.00 K.	Otto Lake Crossing, Mile 69.4, Okanagan Subd., near Armstrong, B.C.	60-279..... Could not stop on approaching train.	
"	5	9.20 K.	Pembina Crossing, Winnipeg, Man.	7266..... Running by stop signal.	
"	7	7.45 p.m.	Kingston Road, Cobourg, Ont.	LJ-59..... Failed to stop at gate.	
"	8		West St., Orillia, Ont.	PCV 215 and 67260	Gates down; driver claimed did not see them and thought they had been raised; drove into them, breaking one arm off gates.
"	13	10.55 a.m.	Ontario St., Cobourg, Ont.	Ont. LT-560	Failed to obey stop signal when No. 14 close to crossing.
"	13	2.55 p.m.	Ontario St., Cobourg, Ont.	Ont. LT-361	Failed to obey signal to stop when train approaching crossing.
"	15	10.38 a.m.	Laframboise St., St. Hyacinthe, Que.	Que. 71831	Disregarded signal; passed ahead 100 feet of train No. 11.
"	17	1.13 p.m.	Laframboise St., St. Hyacinthe, Que.	Que. 72058	Disregarded signal; passed 50 feet of train.
"	19	9.15 a.m.	Dundas St., Trenton, Ont.	M.P. 108-Ont.	Ignored signal when crossing track.
"	21	18.40	Farm crossing, Asquith Subd., near Druro, Sask.	Sask. T-2-612	Not looking for trains before driving onto crossing.
"	26	1.10 p.m.	Centre St. and Atwater Ave., Montreal, Que.	Que. 58547	Ignoring stop signals and passing over crossing when train approaching.
May 10	7.30 a.m.	St. Remi St., Montreal, Que.	Que. L. 810	Disregarded stop signals; ran into flagman and knocked him down.	
"	13	7.00 p.m.	Kingston Road, Cobourg, Ont.	58270-C	Owing to rain driver claims he did not see lowered gates; drove through them.
"	23	16.40 K.	107th Ave. Crossing, Edmonton, Alta.	Alta. 4-444	Disregarded whistle and wigwag and drove across track.
"	23		6th Ave., Regina, Sask.	Sask. 32022	Disregarded stop signal and crossed immediately ahead of No. 61.
"	24	8.15 p.m.	St. George St., St. Thomas, Ont.	BM 669	Disregarded signals; crossed within 50 feet of moving train.
"	26	15.00 K.	First St. E. Public Crossing, Vegreville, Alta.	Alta. 46-894	Tried to drive around train; train moved, resulting in collision and damage to auto. No injuries.
"	28	8.11 a.m.	Walton St., Port Hope, Ont.	LT 625	Disregarded signal as No. 96 was coming in from the north.
"	28	6.40 a.m.	Public Crossing, M.P. 32.5, Wabamun Subd., Edson, Alta.	Alta. 10643	Not driving car clear of track.
"	29	14.40	7th Ave., Regina, Sask.	Sask. 43008	Disregarded signals and crossed 7th Ave immediately ahead of No. 62, narrowly averting accident.
"	30	1.15 a.m.	Devonshire Road, Walkerville, Ont.	158267	Drove under gates while bell was ringing, breaking same.
"	30	10.45	First St., Brandon, Man.	Man. 44-595	Disregarded signals; crossed track ahead of engine.
"	30	2.03 a.m.	Atwater Ave., Lachine Canal bank, Montreal, Que.	T. 1944	Disregarded stop signals given; crossed track at about 30 miles per hour when train approaching.
June 6	10.20 p.m.	Second public crossing East of Joliette Station on the Grand Mere Subd.	L. 4448	Auto crashed into engine while stationary owing to brakes not working; auto damaged.	
"	9	24.20 K.	Public Crossing East of Depot, Drumheller, Alta.	Alta. 59-781	Owing to carelessness while passing over crossing struck leading car; no injury to anyone; auto slightly damaged.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930				
June 10....	24.15.....	104th Ave. and 110th St., at C.N.-C.P. Transfer, Edmonton, Alta.	Alta. 47-783.....	Approached crossing at high rate of speed, but was nearly stopped.
" 12....	8.05 p.m....	Lindsay St., Lindsay, Ont.	KW-413.....	Ignored stop signal in front of shunter, nearly hitting signalman.
" 19....	3.50 a.m....	Kingston Road East, Cobourg, Ont.	Man. 5390.....	Apparently did not see gate until too close and drove car into ditch to avoid striking gate. Car stopped foul of track.
" 25....	14.30.....	Water St. Crossing, Winnipeg, Man.	139.....	Ignored signals.
" 25....	5.05 p.m....	Charlotte St. Crossing, Peterboro, Ont.	Ont. K.Z. 446...	Ignored signals and ran into gates, damaging same.
" 26....	18.40 K.....	Public Crossing, West End Hilliard, Alta.	Alta. 63-627.....	Ignored signals narrowly escaping injury.
" 27....	14.00 K.....	Water St., Winnipeg, Man.	3408.....	Ran through stop signal.
July 2....	12.45 p.m....	Public Crossing, Victoriaville, Que.	Que. 81715.....	Auto did not stop; broke westerly side gate.
" 3....	10.15 p.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. 53601.....	Ignored signals; crossed tracks when train approaching.
" 3....	10.20 p.m....	Atwater Ave., Lachine Canal Bank, Montreal, Que.	Que. 60021.....	Ignored signals; crossed tracks when train approaching.
" 4....	10.45 p.m....	Front St., Orillia, Ont.	.....	Auto ran through gates, breaking points off when gates were down.
" 5....	9.22 a.m....	Temporary Crossing at station while subway under construction, Concord, Ont.	HJ-214.....	Ignored signals; crossed ahead of train 41.
" 19....	22.25.....	115th Ave. and East Main Line, Edmonton, Alta.	Alta. 51-500.....	Disregarded signals; stopped car on track; engine caught side of auto, damaging running board and fender.
" 27....	1.15.....	Watrous Yard Highway, Watrous, Sask.	Sask. 90-304...	Ran into side of train, breaking train pipe and causing drawbars to be pulled.
" 29....	.....	Pembina Ave. Crossing, Winnipeg, Man.	2-999.....	Crossing in front of train and ignoring automatic signals and bell ringing; striking speeder coming in opposite direction.
" 29....	5.10 p.m....	Lindsay St., Drummondville, Que.	.....	Auto ran between lowered gates when they were being lowered; backed up before south gate could be raised to let him out. South gate broken. Warning bell sounded.

## CANADIAN PACIFIC RAILWAY LINES

STATEMENT OF DANGEROUS PRACTICES AT PROTECTED HIGHWAY CROSSINGS  
(WESTERN LINES) MONTHS OF JANUARY, FEBRUARY, MARCH, 1930

## MANITOBA DISTRICT

Date	Time	Crossing	Auto No.	Remarks
1930				
Mar. 17....	9.15 K.....	Talbot Ave., Winnipeg Ter.	Man. 11-797.....	Ran into side of crossing, could not stop in time and skidded into gate.

## CANADIAN PACIFIC RAILWAY LINES—Continued

## SASKATCHEWAN DISTRICT

Date	Time	Crossing	Auto No.	Remarks
1930				
Mar. 11....	15.50 K....	Broadway-Yorkton...	56556 (1929).....	Drove over crossing in front of engine 3085 as this engine was coming in. Was not more than 10 feet from pilot of engine.
" 13....	16.00 K....	" "	56556 (1929).....	Drove over crossing in front of engine 3085 when switching at crossing. Was close to cars and disregarded signals entirely.
" 31....	15.10 K....	" "	T. 1972.....	Drove over crossing against signals. Passed about 35 feet in front of cars being shoved over crossing by engine 826.

## ALBERTA DISTRICT

Jan. 22....	13.30 K....	4th St. W., Calgary...	11-423.....	Gates were lowered for freight from west, when auto ran into southwest gate, breaking it.
" 29....	20.15 K....	2nd St. Medicine Hat.	18-822.....	Car ran into north gate, breaking it and signal lantern.
Mar. 27....	3.05 K....	2nd St., Medicine Hat.	766 (truck).....	Truck owned by Assiniboia Hotel ran through north gate, breaking same.

## BRITISH COLUMBIA DISTRICT

Jan. 1....	10.00 K....	Powell St., Vancouver	B.C. 77-219....	Ran in front of engine and stalled across track.
" 9....	16.45 K....	North Vancouver Ferry.	B.C. 14-890....	Stopped foul of crossing gates.
" 10....	14.25 K....	Powell St., Vancouver	B.C. 755.....	Ignored stop signal.
" 21....	10.46 K....	" "	B.C. 65-594....	" "
Feb. 16....	24.55 K....	North Vancouver Ferry.	B.C. 92-907....	Entered ferry crossing without lights at a speed of 30-35 miles per hour and got tangled up in cross-over switches.
" 25....	7.10 K....	Powell St., Vancouver	B.C. 80-611....	Ignored stop signal.
" 27....	11.09 K....	" "	B.C. 60-822....	" "
" 28....	7.55 K....	" "	B.C. 65-189....	" "
" 28....	8.00 K....	" "	B.C. 79-346....	" "
" 28....	8.32 K....	" "	B.C. 92-130....	" "
Mar. 3....	10.08 K....	" "	B.C. 66-822....	" "
" 4....	9.39 K....	" "	B.C. 78-551....	" "
" 5....	8.35 K....	" "	B.C. 84-836....	" "
" 6....	9.17 K....	" "	(truck). B.C. 73-622....	" "
" 17....	18.30 K....	Columbia Ave., Vancouver.	B.C. 83-597....	Ran by flagman.
" 17....	23.00 K....	Columbia Ave., Vancouver.	B.C. 89-449....	" "
" 18....	14.40 K....	North Vancouver Ferry.	B.C. 65-374....	" "
" 20....	10.38 K....	Powell St., Vancouver	B.C. 65-110....	Ignored stop signal.
" 20....	14.45 K....	" "	(truck). B.C. 87-128....	" "
" 20....	8.00 K....	North Vancouver Ferry.	B.C. 1122....	" "
" 21....	13.30 K....	Powell St., Vancouver	(Motorcycle). B.C. 75-622....	" "
" 26....	14.50 K....	" "	B.C. 483 (truck)	" "
" 26....	16.01 K....	Columbia Ave., Vancouver.	B.C. 93-769....	" "
" 30....	17.51 K....	Powell St., Vancouver	B.C. 69-463....	" "
" 31....	8.40 K....	" "	B.C. 81-054....	" "
" 31....	13.52 K....	" "	B.C. 70-065....	" "



## CANADIAN PACIFIC RAILWAY LINES—Continued

## ESQUIMALT AND NANAIMO RAILWAY

Date	Time	Crossing	Auto No.	Dangerous Practice
1930				
Mar. 11....	16.25 K....	Esquimalt Road, Victoria W.	B.C. 12-342....	Motor car westerly bound, gates in lowered position. Auto approached and did not slow, signalman shouted to driver but to no avail. Motor car crashed the gate near the stanchion. Before signalman had an opportunity to talk with driver or obtain name he drove away.

## KETTLE VALLEY RAILWAY

Nil.

STATEMENT OF DANGEROUS PRACTICES AT PROTECTED HIGHWAY CROSSINGS  
ON (EASTERN LINES) MONTHS OF FEBRUARY, MARCH AND APRIL, 1930

## NEW BRUNSWICK DISTRICT

Feb. 2....		Douglas Ave., St. John	N.B. 7894.....	Car left standing on crossing while driver went back to assist a stalled car.
" 8....	3.00 p.m....	" "	N.B. X-624.....	Auto truck turned on crossing.
Mar. 10....	3.05 p.m....	" "	N.B. 7811.....	Crashed through gate while gates were down. Driver claimed his brakes failed to work.
April 17....	3.00 p.m....	" "	.....	Auto turned on crossing.
" 27....	3.05 p.m....	" "	N.B. 7666.....	Auto stopped on crossing to pick up passengers.

## QUEBEC DISTRICT

Mar. 23....		Montcalm St., Hull West.	Ont. OS-538....	While gates were down for train, auto ran through them.
Feb. 27....		Lake Shore Road Crossing, Vaudreuil.	Que. A-591.....	Ran through south gate, breaking arm, woodwork and axle.

## ONTARIO DISTRICT

Feb. 8....	2.36 p.m....	George St., Belleville.	Man. 28058.....	Drove upon crossing in face of approaching and nearby passenger train. Stopped with front wheels on rail and was struck. Driver considerably injured.
" 19....	8.20 p.m....	Mil. 65.5, Havelock S.D.	.....	Lady driving horse and cutter mishandled reins and pulled horse off crossing upon track where horse broke loose and cutter was smashed by train. No personal injury.
Mar. 29....	3.46 p.m....	Mil. .03, Oshawa S.D.	C-58-273.....	Loaded truck had crossed track and was clear but got into a rut and in trying to get out driver worked truck back foul of track where it stalled and was struck by passenger train. No personal injury.
April 1....	9.25 a.m....	Godfrey.....	N.C. 555.....	Drove car upon crossing in face of approaching train. Driver's attention apparently not given to railway account having trouble in starting car short distance back. No personal injury.
" 3....	8.50 p.m....	Perth.....	C-62-523.....	Car was driven into rear part of tender of engine on a freight train passing over crossing. No personal injury.

CANADIAN PACIFIC RAILWAY LINES—*Concluded*ONTARIO DISTRICT—*Concluded*

Date	Time	Crossing	Auto No.	Dangerous Practice
1930				
Feb. 3...	11.00 p.m...	Pall Mall St., London.	L-6178.....	Auto skidded on slippery pavement into gate arm, breaking end off.
" 8...	5.00 p.m...	Quebec St., London...	140-153.....	Auto disregarded stop signal and crossed tracks in front of yard engine.
Mar. 5...	10.00 p.m...	Adelaide St., London.	M-2705.....	Disregarded watchman's stop signal and crossed tracks in front of yard engine.
" 16...	5.30 p.m...	Quebec St., London...	L-7322.....	Disregarded watchman's stop signal and crossed tracks in front of yard engine.
" 22...	12.10 p.m...	Queen St., Chatham..	AK-250.....	Auto ran into south gate arm, breaking it.
" 19...	11.15 p.m...	Richmond St., London	PM-545.....	Auto ran into gate arm, breaking same. Gates were lowered and warning bell ringing. Driver claimed did not see them until too close to stop.
" 25...	12.45 p.m...	Pall Mall St., London.	L-5921.....	Auto ran into gate arm, breaking it.
" 31...	11.15 p.m...	Richmond St., London	.....	Gates were down and warning bell ringing, auto going north at speed of 50 miles per hour, crashed through both South and North gates, breaking gate arms.
April 10...	8.40 p.m...	Richmond St., London	.....	Auto failed to stop as gates being lowered, and crashed through South gate arm, breaking it.
" 15...	7.35 p.m...	William St., Chatham	.....	Auto truck ran through gates, breaking three of them.
" 19...	4.57 p.m...	Quebec St., London...	M-4461.....	Auto disregarded watchman's stop signal and crossed over to wrong side of track in front of a freight train a few feet.
" 17...	4.50 p.m...	Adelaide St., London.	M-2279.....	Auto disregarded watchman's stop signal and crossed tracks with train only about 20 feet away.
" 28...	9.37 p.m...	Adelaide St., London.	L-3905.....	Auto going south crossed tracks in front of passenger train.
Feb. 10...	2.50 a.m...	St. Clair Ave., Toronto.	504C.....	Truck crashed through gate.
Mar. 14...	11.35 p.m...	St. Clair Ave., Toronto.	O-7372.....	Auto crashed through gates.
" 27...	.....	Front St. West, Toronto.	3026-C.....	Ran into gatestand, breaking gatestand and barrier.
Feb. 24...	.....	MacLennan Ave., Toronto.	Y-3988.....	Automobile ran into and damaged crossing gates.

## THE TORONTO, HAMILTON AND BUFFALO RAILWAY COMPANY

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930				
April 3...	4.37 p.m...	Wentworth St., Hamilton, Ont.	.....	As gates being lowered truck ran through, breaking points of east side gates.
" 9...	5.05 p.m...	Cannon St. Crossing, Hamilton, Ont.	C. 10-436.....	Ignored signals and drove onto track in front of slowly moving yard drag.
" 11...	9.10 p.m...	Charles St., Hamilton, Ont.	J-9784.....	Gate broken.
" 19...	2.55 p.m...	Maple Ave., Hamilton, Ont.	J-7236.....	Ignored signal; drove into side of engine.
" 22...	7.33 p.m...	James St., Hamilton, Ont.	.....	Ignored signals; drove auto between south gates, across track, and broke point off northwest gate.
May 2...	1.10 a.m...	John St. Crossing, Hamilton, Ont.	H-2541.....	Ignored the fact that gates were down; ran through south gate, stopping on track.
" 28...	1.40 p.m...	Dunnville Roundhouse, Dunnville, Ont.	65058C.....	Ignored signals; truck drove into engine; did not hear bell ringing.
June 7...	6.10 p.m...	Wentworth St., Hamilton, Ont.	H-4510.....	Car ran down hill into gate, unoccupied; broke standard of north side gate. Brakes faulty.



# Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

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*In the matter of the Order of the Board No. 42530, dated April 29, 1929, as amended by Order No. 44239, dated January 24, 1930, and Order No. 44366, dated February 19, 1930, directing the Canadian National Railways to construct, maintain, and operate a branch line for the Gebo Coal Company, Limited, at Luscar, Alberta;*

*In the matter of the application of the Canadian National Railways and the Luscar Collieries, Limited, under section 197 of the Railway Act, for an Order fixing such compensation, if any, as the Board may find to be justly payable to the owner, lessee, or occupier of any mines in the vicinity for or by reason of any severance of the railway of the land lying over such mines or because of the working of such mines being prevented, stopped, or interrupted, or the same having to be worked in such manner and under such restrictions as not to injure or be detrimental to the railway, and also for any minerals which cannot be obtained by reason of the construction and operation of the branch line required by the Board to be constructed by the Canadian National Railways for the Gebo Coal Company, Limited, pursuant to the said Order No. 42530, dated April 29, 1929, as amended by Orders No. 44239 and 44366 aforesaid;*

*And in the matter of the application of the Gebo Coal Company, Limited, for an Order declaring that, by reason of the terms of the agreement of July 1, 1927, no compensation can be claimed by or paid to the Luscar Collieries, Limited, for damages for, or by reason of the severance by the Canadian National Railways of the line running over the mines of the Luscar Collieries, Limited, or the adjoining territory, or because of the operation by the Canadian National Railways, under the Railway Act, of the industrial spur and extensions thereto mentioned in the application as those of the Gebo Coal Company, Limited.*

(File 31531.1.1, pt. 4)

### JUDGMENT

THOMAS VIEN, THE DEPUTY CHIEF COMMISSIONER:

The Gebo Coal Company, Limited, of Edmonton, Alberta, is the owner of the coal mining lease No. 2190, from the Dominion Government, of the coal



lying in a certain area of land, in the Rocky Mountain Forest Reserve, province of Alberta, as described in the said lease, a copy of which is on file with this Board.

The Mountain Park Collieries, Limited, and the Luscar Collieries, Limited, own similar leases of lots of land in the same territory and contiguous to those under lease to the Gebo Company, and, for the purpose of their operations, they have constructed branch lines of railway and have leased them to the Canadian National Railway Company, by whom they are maintained and operated under an agreement dated July 1, 1927, a copy of which is also on file.

The end of steel of the Luscar Collieries branch line lies within a distance of less than six miles from the property of the Gebo Coal Company, which made application to this Board under the provisions of section 185 of the Railway Act, for an order directing the Canadian National Railways, as lessees and operators of the said Luscar branch line, to build, maintain, and operate an industrial spur as per plans and profiles submitted, so as to enable it to market its products.

This application was heard at Edmonton on April 4, 1929, and was granted by this Board's judgment dated April 27, 1929, and its Order No. 42530 dated the 29th of the same month. (Board's Orders and Judgments, vol. 19, pp. 59 and 66.)

By this order, the Canadian National Railways was directed to build, under the provisions of section 185 of the Railway Act, the industrial spur applied for, and to maintain and operate the said branch line in good working order and condition, for the purposes of the Gebo Coal Company's industry, and, for the same purposes, they were granted running rights over the main line of the Luscar Collieries branch line.

The estimates of the cost of constructing this branch line, filed by the Canadian National Railways and verified by our Assistant Chief Engineer, amounted to \$75,000, for material and labour. As the right of way is to pass on Crown lands, and that it has to be provided for by a lease from the Crown, the Board found that the said sum of seventy-five thousand dollars, plus five thousand dollars for incidental expenses and damages, was sufficient, for the time being.

The applicant company was therefore directed to deposit in a chartered bank, a preliminary sum of \$80,000, estimated by this Board as necessary and sufficient to defray the expenses of constructing and completing the said spur in good order, including the cost of the right of way, incidental expenses and damages, it being also provided that, in the event of the said work costing more or less than the said sum of \$80,000, the difference would be the subject of further order by the Board.

In compliance with this order, the Gebo Coal Co. deposited at La Banque Canadienne Nationale, Rideau St., Ottawa, the prescribed sum of \$80,000, and notice of such deposit was given to the Canadian National Railways. The Honourable the Minister of the Interior for Canada has, since, caused the Crown's consent to the construction of this spur, to be filed with this Board.

As yet, the Canadian National Railways have not complied with the provisions of the Board's order, alleging that the Board should develop with the Gebo Coal Co. the method to be adopted to protect the Canadian National Railways against claims from occupants of adjacent mining lots, being of the opinion that the damages would be heavy and that a sum sufficient to cover these damages should be deposited with the Board, before the constructing work be undertaken. (Mr. Fraser's Letter dated December 6, 1929.)

On May 26, 1920, Mr. Fraser, on behalf of the Canadian National Railways, wrote to us as follows:—

“Before commencing the construction of the spur, it would seem to be in the interest of all concerned that the damages, if any, for loss of coal should be ascertained, and ample authority for such ascertainment is to be found in Section 197 of the Railway Act. I am, therefore, directed to apply under said Section 197 for an order of the Board fixing such compensation as the Board may find to be justly payable to the owner, lessee, or occupier of any mines in the vicinity for or by reason of any severance by the Railway of the land lying over such mines or because of the working of such mines being prevented, stopped or interrupted, or the same having to be worked in such manner and under such restriction as not to injure or be detrimental to the Railway, and also for any minerals which cannot be obtained by reason of the construction and operation of the railway.

“I have been requested by M. Lymburn, Reid and Cobbledick, solicitors for the Luscar Collieries, to join them with the Canadian National Railways in the present application.”

On June 19, 1930, the Gebo Coal Co. Ltd. made application for an order declaring that, by reason of the terms of the agreement of the 1st of July, 1927, no compensation could be claimed by, nor paid to the Luscar Collieries Ltd. for damages due to the severance by the Canadian National Railways lines of the land lying over the mines of the Luscar Collieries Ltd. or the adjoining territory, or, because of the operation by the Canadian National Railways under the Railway Act, of the industrial spur ordered to be constructed for the Gebo Coal Co. Ltd.

These are the applications which were heard at Edmonton on August 4, 1930, and which must now be dealt with.

At the hearing, Mr. Owens restated the position taken by the Canadian National Railways, and said: “All we ask before undertaking the construction of this spur is protection, that is protection not only for the mineral damage which can at the present moment be legally ascertained, but also for the damages for such coal as may be under that part of the spur which at the present time has not been developed, and which may not be capable of ascertainment. We feel that this should be considered as part of the cost of the spur.” (Record, vol. 565, p. 4164.)

On behalf of the Luscar Collieries, Mr. Milner stated:—

“It may be impossible to determine with any degree of accuracy the damages to be suffered by loss of coal beyond a certain point. There is not before the Board at the present moment, an application for leave to erect. If there be such an application, it would not extend farther west than what will be shown on our plan submitted to the Commission as cross-sections D-D, and for that reason, it may be impossible, as we proceed, to assess the damages beyond that point, owing to the lack of discovery work; now, sir, I take it that the Board does not wish me to go into the different applications, at any rate at this moment. We take it that the Board will not make any declaratory order as to the damages, neither can those damages be ascertained with accuracy.

“As to the 2nd application by the Gebo Coal Co., our submission is that the Gebo Coal has no “locus”; that it cannot apply here to have interpreted an agreement between the Canadian National Railways and the Luscar Collieries Ltd., to which the Gebo Coal Co. Ltd. was not a party.”



The DEPUTY CHIEF: . . . "The Gebo Coal Co. are called upon to put up the money. . . . Would you say that the Gebo Coal Co. would have no "locus" to determine what amount, if any, was due to the Luscar Collieries?"

Mr. MILNER: "I would not go as far as to say that. The Board would no doubt allow them to come in as interveners in some way . . . But the Gebo Coal Co. cannot come in and put themselves in the place of the Canadian National Railways and rely upon an agreement between the Canadian National Railways and the Luscar Collieries. The next submission, upon that point, is that the Board is without jurisdiction to interpret an agreement of this character between the Canadian National Railways and the Luscar Collieries Ltd.; that it is an agreement which should be dealt with by the ordinary courts." (Ibid., pp. 4167 et s.)

And further:

"We have indicated the extent of the claim (in damages)—We have never made any definite claim for payment of compensation, but we have intimated that we will have a claim." It was in the form of a letter. It says in part: "If the Board of Railway Commissioners order this coal left in for the protection of the proposed railway, we will expect to be compensated for same." (Ibid., pp. 4180 et s.)

By the DEPUTY CHIEF: "It is your contention that your company has no fundamental objection to the spur; it simply wants to be compensated for any coal that is not mined?"

Mr. MILNER: "That is our position." (Ibid., p. 4187.)

And further:

"The DEPUTY CHIEF: Your interest is quite safe. You have the law which says that from time to time the Board will determine what compensation, if any, is due to a lessee or owner of mines lying under the right of way."

Mr. MILNER: "Yes, sir."

The DEPUTY CHIEF: "Therefore, if and when any damage is suffered. . . . you will come to this Board, under section 197 of the Railway Act, and the Board has the power to go into the whole matter and determine the amount of compensation, if any, to which you are entitled."

Mr. MILNER: "I quite agree with that." (Ibid., pp. 4194 et s.)

And further:

"The DEPUTY CHIEF: From the point of view of the Luscar Collieries, would there be any injury suffered by your company if we directed the railway company forthwith to build it, (the spur) if we considered that to be in the public interest?"

Mr. MILNER: "No, sir." (Ibid., pp. 4196 et s.)

The Board also pointed out to Mr. Owens that if, during the course of construction or after, the amount of \$80,000 were found to be insufficient to cover the cost of construction or the damages, if any, it could always order the Gebo Coal Company to deposit within a specified time, any necessary additional amount, and if it failed to deposit it, it could, under section 187 of the Railway Act, authorize the Canadian National Railways to remove this spur, and the Luscar Collieries to mine its coal.

The DEPUTY CHIEF: "Would any injury be caused to any party before the Board to-day if such a course were taken?"

Mr. OWENS: "I cannot see any, sir." (Ibid., p. 4209.)



It is now necessary to review the legislation applicable to this case.

Section 185, under which the Gebo spur was ordered to be built, reads in part as follows:—

185. (1) When any industry or business is established or intended to be established, within six miles of the railway, and the owner of such industry or business, or the person intending to establish the same, is desirous of obtaining railway facilities in connection therewith, but cannot agree with the company as to the construction and operation of a spur or branch line from the railway thereto, the Board may, on the application of such owner or person, and upon being satisfied of the necessity for such spur or branch line in the interests of trade, order the company to construct, maintain and operate such spur or branch line, and may direct such owner or person to deposit in some chartered bank such sum or sums as are by the Board deemed sufficient, or are by the Board found to be necessary to defray all expenses of constructing and completing the spur or branch line in good working order, including the cost of the right of way, incidental expenses and damages.

(2) The amount so deposited shall, from time to time, be paid to the company upon the order of the Board, as the work progresses.

(3) The aggregate amount so paid by the applicant in the construction and completion of the said spur or branch line shall be repaid or refunded to the applicant by the company by way of rebate, to be determined and fixed by the Board, out of or in proportion to the tolls charged by the company in respect of the carriage of traffic for the applicant over the said spur or branch line.

Section 37 of the Railway Act reads as follows:—

37. Any power or authority vested in the Board may, though not so expressed, be exercised from time to time, or at any time, as the occasion may require. 1919, c. 68, s. 37.

It is quite apparent that the Board has power, from time to time to order the deposit of any additional sum or sums of money that it deems necessary to cover the cost of constructing this spur, and the incidental expenses and damages in connection therewith.

As regards mines and minerals, the following sections are applicable:—

194. No company shall, without the authority of the Board, locate the line of its proposed railway, or construct the same or any portion thereof, so as to obstruct or interfere with, or injuriously affect the working of, or the access or adit to any mine then open, or for the opening of which preparations are, at the time of such location, being lawfully and openly made. 1919, c. 68, s. 194.

195. The company shall not, unless the same have been expressly purchased, be entitled to any mines, ores, metals, coal, slate, mineral oils, gas or other minerals in or under any lands purchased by it, or taken by it under any compulsory powers given it by this Act, except only such parts thereof as are necessary to be dug, carried away or used in the construction of the works.

(2) All such mines and minerals, except as aforesaid, shall be deemed to be excepted from the conveyance of such lands, unless they have been expressly named therein and conveyed thereby. 1919, c. 68, s. 195.

196. No owner, lessee or occupier of any such mines or minerals lying under the railway or any of the works connected therewith, or

within forty yards therefrom, shall work the same until leave therefor has been obtained from the Board.

(2) Upon any application to the Board for leave to work any such mines or minerals, the applicant shall submit a plan and profile of the portion of the railway to be affected thereby, and of the mining works or plan affecting the railway, proposed to be constructed or operated, giving all reasonable and necessary information and details as to the extent and character of the same.

(3) The Board may grant such application upon such terms and conditions for the protection and safety of the public as to the Board seem expedient, and may order that such other works be executed, or measures taken, as under the circumstances appear to the Board best adapted to remove or diminish the danger arising or likely to arise from such mining operations. 1919, c. 68, s. 196.

197. The company shall, from time to time, pay to the owner, lessee, or occupier of any such mines such compensation as the Board shall fix and order to be paid, for or by reason of any severance by the railway of the land lying over such mines, or because of the working of such mines being prevented, stopped or interrupted, or of the same having to be worked in such manner and under such restrictions as not to injure or be detrimental to the railway, and also for any minerals not purchased by the company which cannot be obtained by reason of the construction and operation of the railway. 1919, c. 68, s. 197.

Section 197 is new. It was enacted in 1919, and works a radical change in the law, as interpreted by the Privy Council in *Davis vs. James Bay Railway Co.* (1914) A.C. 1043.

Until then, the railway company was required to compensate the mineral owner at once for loss of value arising from the liability which rested on him to support the railway after severance of the titles to the minerals and to the surface; their Lordships interpreted the expropriation sections as meaning that there was to be an immediate claim for compensation for the value of the lands taken, and for injurious affection of any other hereditaments, the title to which was affected, such as adjacent mines and minerals.

Under the Act as amended, compensation only for the lands actually taken may be awarded. This does not apply in this case, however, because the surface rights belong to the Crown, and the Crown has consented to the spur being built.

Compensation and damages to mine owners for severance of the land lying over mines, or for mines or minerals is now to be fixed by the Board, as and when the claim therefor arises, and the right to such compensation is not absolute, but is subject to being ordered to be paid by the Board.

Formerly, the principle on which the legislature had proceeded, in the opinion of their Lordships, being to dispose of the claim against the company, once for all, on the occasion of taking the land, it is quite apparent that the arbitrators were often left to base their calculations upon a highly hypothetical and arbitrary basis.

With the Act as amended, compensation either for severance of land or for minerals is no longer made when the right of way is expropriated, but is to be made from time to time, upon an application under section 196, ss. 2 of the Act, when the actual damage sustained can be accurately determined.

The proper procedure to follow in this case is therefore that prescribed under section 196 of the Railway Act, subsection 2, namely: If and when the occasion arises, the Luscar Collieries Co. Limited should make application to this Board for leave to work any mines or minerals lying under the right of way



of the Gebo Spur, or within forty yards therefrom, submitting at the same time a plan and profile of the portion of the railway to be affected thereby, and of the mining works or plan affecting the railway proposed to be constructed or operated, giving all reasonable and necessary information and details as to the extent and character of the same.

Upon such application being received, the Board will inquire into the extent to which the application can be granted, having due regard to the protection and safety of the public.

As a result of such inquiry, the Board will be in a position accurately to ascertain the amount of coal which cannot be won, and the compensation, if any, to which the mining company is entitled, and shall order such compensation to be paid. The amount so determined will become part and parcel of the incidental damages referred to in section 185, subsection 1 of the Railway Act, and the Board will order the Gebo Coal Co. to deposit such additional sum as will be found necessary to cover such damages. If and when such additional deposit is ordered, the Gebo Coal Co. fails to deposit it, the Canadian National Railways can apply under s. 187 of the Railway Act for leave to remove the spur herein in question, and the Luscar Collieries being no longer restricted in its mining operations will suffer no damages.

At the hearing, Mr. Owen and Mr. Milner, both admitted, that if such a course were followed, no injury could be suffered by their clients.

Under these circumstances, in my opinion, an Order should be made directing the Canadian National Railways forthwith to carry out the provisions of the order of the Board No. 42530 of April 29, 1929, and the amendments thereto; immediately to call for tenders for the construction of an industrial spur as per the specifications, plans and profiles on file, approved by the Assistant Chief Engineer of the Board, the work to be commenced within thirty days and completed within ninety days of the date of the order, without prejudice to the rights of all interested parties as regards the question of compensation and the questions of law arising out of the interpretation of the operating agreement between the Luscar Collieries and the Canadian National Railways dated July 1, 1927.

EDMONTON, August 4, 1930.

Commissioners Norris and Stoneman concurred.

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#### ORDER No. 45195

In the matter of the Order of the Board No. 42530, dated April 29, 1929, as amended by Order No. 44239, dated January 24, 1930, and Order No. 44366, dated February 19, 1930, directing the Canadian National Railways to construct, maintain, and operate a branch line for the Gebo Coal Company, Limited, at Luscar, Alberta;

*In the matter of the application of the Canadian National Railways and the Luscar Collieries, Limited, under section 197 of the Railway Act, for an Order fixing such compensation, if any, as the Board may find to be justly payable to the owner, lessee, or occupier of any mines in the vicinity for or by reason of any severance of the railway of the land lying over such mines or because of the working of such mines being prevented, stopped, or interrupted, or the same having to be worked in such a manner and under such restrictions as not to injure or be detrimental to the railway, and also for any minerals which cannot be obtained by reason of the construction and operation of the branch line*



required by the Board to be constructed by the Canadian National Railways for the Gebo Coal Company, Limited, pursuant to the said Order No. 42530, dated April 29, 1929, as amended by Orders No. 44239 and 44366 aforesaid;

And in the matter of the application of the Gebo Coal Company, Limited, for an Order declaring that, by reason of the terms of the agreement of July 1, 1927, no compensation can be claimed by or paid to the Luscar Collieries, Limited, for damages for, or by reason of the severance by the Canadian National Railways of the line running over the mines of the Luscar Collieries, Limited, or the adjoining territory, or because of the operation by the Canadian National Railways, under the Railway Act, of the industrial spur and extensions thereto mentioned in the application as those of the Gebo Coal Company, Limited.

File No. 31531.1.1

MONDAY, the 4th day of August, A.D. 1930.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Edmonton, Alberta, August 4, 1930, in the presence of counsel for and representatives of the Canadian National Railways, the Luscar Collieries, Limited, and the Gebo Coal Company, Limited, and what was alleged,—

*The Board orders:* That the Canadian National Railways be, and they are hereby, directed to commence the construction of the said branch line, in accordance with the plans and specifications approved under the said Order No. 42530, dated April 29, 1929, as amended by Order No. 44239, dated January 24, 1930, and February 19, 1930, within thirty days from the date of this order, and to complete the same within ninety days from the date of this order.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

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ORDER No. 45181

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.14

FRIDAY, the 8th day of August, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 676, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Tariff C.R.C. No. 676, approved herein, is 4 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45182

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 8th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, namely:—

Supplement 12 to C.R.C. E-1228.  
Supplement 31 to C.R.C. E-1235.  
Supplement 33 to C.R.C. E-1237.  
Supplement 10 to C.R.C. E-1241.  
Supplement 26 to C.R.C. E-1244.  
Supplement 6 to C.R.C. E-1248.  
Supplement 19 to C.R.C. E-1302.  
Supplement 3 to C.R.C. E-1504.  
Tariff C.R.C. E-1619.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45183

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

FRIDAY, the 8th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published to Windsor, Ont., in Supplement No. 14 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 14 to Tariff C.R.C. No. E-4322, approved herein, are those in effect to Windsor, Ont. (Canadian Pacific Railway delivery), prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45184

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

FRIDAY, the 8th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll published in item 110 of Supplement No. 22 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 110 of Supplement No. 22 to Tariff C.R.C. No. 817, approved herein, is 14 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45185

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

FRIDAY, the 8th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published to Windsor, Ont. (Windsor, Essex and Lake Shore Rapid Railway delivery), in items 40D and 45A, also the tolls published in items 47 and 48 of Supplement No. 8 to Tariff C.R.C. No. E-4314, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said items 40D, 45A, 47, and 48 of Supplement No. 8 to Tariff C.R.C. No. E-4314, approved herein, are as follows:—

Items 40D and 45A, the rates to Windsor, Ont. (Canadian Pacific Railway delivery), in effect prior to July 1, 1927.

Item	To	Rates in cents per 100 pounds
Item 47—		
	New Liskeard, Ont. . . . .	70½
	North Bay, Ont. . . . .	50
	Sault Ste. Marie, Ont. . . . .	59½
	Sudbury, Ont. . . . .	54
Item 48—		
	New Liskeard, Ont. . . . .	80
	North Bay, Ont. . . . .	56½
	Sault Ste. Marie, Ont. . . . .	67
	Sudbury, Ont. . . . .	61

H. A. McKEOWN,  
*Chief Commissioner.*



ORDER No. 45186

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

FRIDAY, the 8th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll published from Halifax, N.S., and Saint John, N.B., to Brandon, Man., in item No. 120-A of Supplement No. 9 to Tariff C.R.C. No. E-4368, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 120-A of Supplement No. 9 to Tariff C.R.C. No. E-4368, approved herein, is \$1 per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 45187

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

FRIDAY, the 8th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 22 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 22 to Tariff C.R.C. No. 783, approved herein, are as follows:—

		Rates in cents per 100 pounds	
		L.C.L.	C.L.
Not over	5	7	5
Over	5 and not over 10	9½	5½
"	10 " " "	11½	6½
"	20 " " "	12½	8
"	30 " " "	14½	8
"	40 " " "	16½	8
"	50 " " "	18	10
"	60 " " "	19½	10
"	70 " " "	20½	10
"	75 " " "	20½	12
"	80 " " "	22	12
"	90 " " "	22½	12
"	100 " " "	25	13
"	125 " " "	27½	15½
"	150 " " "	30½	18
"	175 " " "	30½	18
"	200 " " "	32	19

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45188

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

FRIDAY, the 8th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item No. 90B of Supplement No. 23 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item No. 90B of Supplement No. 23 to Tariff C.R.C. No. 817, approved herein, are as follows:—

Miles		Rates in cents per 100 pounds
Not exceeding 10	.....	4½
Over 10 and not over 30	.....	5
“ 30 “ “ “ 40	.....	6
“ 40 “ “ “ 60	.....	6½
“ 60 “ “ “ 70	.....	7
“ 70 “ “ “ 90	.....	7½
“ 90 “ “ “ 100	.....	8½
“ 100 “ “ “ 125	.....	9
“ 125 “ “ “ 150	.....	9½

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45235

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 15th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 8 to Tariff C.R.C. No. E-1226, Supplement No. 26 to Tariff C.R.C. No. E-1240, and Tariff C.R.C. No. E-1637, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45236

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

FRIDAY, the 15th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll on scrap slate published in Item 8D of Supplement No. 9 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Item 8D of Supplement No. 9 to Tariff C.R.C. No. E-4310, approved herein, is the rate on concrete building blocks in effect prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 45237

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

FRIDAY, the 15th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Item 355 of Supplement No. 29 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Item 355 of Supplement No. 29 to Tariff C.R.C. No. E-4312, approved herein, are the Halifax rates on canned fish in effect prior to July 1, 1927, less 1½ cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45255

*In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement "O" to Express Classification for Canada No. 7, C.R.C. No. E.T. 986, on file with the Board under file No. 4397.104:*

WEDNESDAY, the 20th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said proposed Supplement "O" to Express Classification for Canada No. 7, C.R.C. No. E.T. 986, on file with the Board under file No. 4397.104, be, and it is hereby, approved, subject to the following changes, namely:—

Condition of Carriage No. 17 to be amended by the addition of the following words at the end of the first sentence of the third paragraph: "At the class or commodity rate applicable."

Also that the item covering barrels be changed to read as follows:

"Barrels or Kegs (Wooden)

Ash, Gumwood or Oak (with iron hoops) . . . . .1  
N.O.S. . . . .2.t.1"

The said Supplement to be published as No. 14 to Express Classification for Canada No. 7.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45261

*In the matter of the application of the Michigan Central Railroad Company, hereinafter called the "Applicant Company," under General Order No. 119, for leave to close Edward Station, in the Province of Ontario:*

File No. 29539

WEDNESDAY, the 20th day of August, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

Upon reading what is filed in support of the application, and upon the report and recommendation of the Chief Operating Officer of the Board,—

*It is ordered:* That the applicant company be, and it is hereby, granted leave, until further Order, to remove the station agent at Edward Station, in the province of Ontario.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45262

*In the matter of the application of the Canadian Northern Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its revised line across the Sumas River, in the Province of British Columbia between mileages 78.49 and 78.98 Yale Subdivision, a distance of 0.49 miles:*

File No. 31450

WEDNESDAY, the 20th day of August, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of the Engineers of the Board, and the filing of the necessary affidavit,—

*It is ordered:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its revised line across the Sumas river, in the province of British Columbia, between mileages 78.49 and 78.98 Yale Subdivision, a distance of 0.49 miles.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45246

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 13th day of August, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 7 to Tariff C.R.C. No. E-1261, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45247

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

WEDNESDAY, the 13th day of August, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item 241 of Supplement No. 39 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item 241 of Supplement No. 39 to Tariff C.R.C. No. 813, approved herein, are 14 cents per 100 pounds in less than carloads, and 12½ cents per 100 pounds in carloads.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45245

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

TUESDAY, the 19th day of August, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 40 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 40 to Tariff C.R.C. No. 813, approved herein, are as follows:—

<i>Classes</i>	<i>Rates in cents per 100 pounds</i>
2nd	21·3
3rd	20
5th	12½

H. A. McKEOWN,  
*Chief Commissioner.*



## The Board of

# Railway Commissioners for Canada

### Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, September 15, 1930

No. 14

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*Application of the Michigan Central Railroad Company for discontinuance of train service, St. Clair Branch, as set forth in Timetable No. 120*

File 25851

#### JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

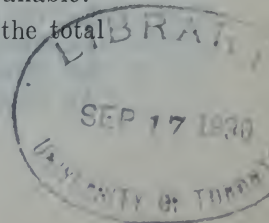
The St. Clair Branch of the Michigan Central Railroad extends from St. Thomas to Courtright, a distance of 66.38 miles. The stations which are referred to in the correspondence and also in the record are set out as, Petrolia, Corey, Oil Springs, Oil City, Petrolia Junction, Kimball, Brigden, Eddys, Muncey, Melbourne, Southwold, Walkers, Appin Road, and Alvinston. The stations Muncey to Alvinston inclusive, as referred to above, are east of Petrolia Junction. Their mileage relations are set out later. The other points referred to may be said to group around Petrolia. Petrolia is 4.9 miles from Petrolia Junction, which is on the main line of the branch. Corey, already referred to, is intermediate to Petrolia. Oil Springs is two miles east of Petrolia Junction. Stations Eddys and Oil Springs are located on the branch running in from Oil City. Kimball and Brigden are west of Petrolia Junction in the direction of Courtright, being respectively 5.6 miles and 9.7 miles from Petrolia Junction. The traffic figures submitted for the branch, for a three-year period, covering freight, passenger, mail and rents, are as follows:—

1927. . . . .	\$163,061 83
1928. . . . .	139,902 52
1929. . . . .	119,499 76

It may be noted that the total earnings declined during the three-year period, and it may also be mentioned that the passenger earnings have also declined. In 1927 they amounted to \$6,239; in 1928 to \$4,997, and in 1929 to \$4,740. The rents amounted to a little less than \$500. The mail traffic is constant, being approximately \$7,500. The figures throughout the three-year period show freight has a preponderance and that it averages 90 per cent.

Analyzing the figures for 1929, the following detail is available:—

Freight. . . . .	89.2% of the total
Passenger. . . . .	3.9%
Mail. . . . .	6.2%
Rents. . . . .	0.7%



The total expense as shown, gives, for

1927.. . . . .	\$219,036 76
1928.. . . . .	228,297 36
1929.. . . . .	200,039 62

The average of the earnings for the three years comes out at \$140,954.70; the average cost at \$215,824.79, making an average deficit of \$74,870.09. In 1929 the train service in operation involved a total train mileage of 64,165 miles, which would work out an average cost per train mile of \$3.50 as against an earnings result of approximately \$2.19. Included in the figures of operating expenses is the item of railway taxes, amounting in round numbers, to \$8,500. While this is a necessary expense, it may, for the purpose of more exact computation be deducted from the total operating expenses. The average, after the deduction is made, would show an average cost of \$3.36 per train mile.

The train service is a mixed one. The following detail sets out in summary fashion the service which has been in operation:—

The so-called winter service, all being mixed trains, is for one train to leave:

St. Thomas.. . . . .	7.15 a.m.
Ar. Petrolia.. . . . .	11.10 a.m., daily except Sunday
Lv. Petrolia.. . . . .	1.00 p.m.
Ar. St. Thomas.. . . . .	5.00 p.m., daily except Sunday

And for another train to leave:

Courtright.. . . . .	7.25 a.m.
Ar. Eddys.. . . . .	8.12 a.m.
Lv. Eddys.. . . . .	8.13 a.m.
Ar. Petrolia.. . . . .	9.03 a.m.

This train carries school children from Brigden, Eddys, Oil Springs, Oil City, to Petrolia. It leaves Petrolia 10.10 a.m. arriving Eddys 12.13 p.m. connecting at Oil City with the train from St. Thomas referred to. Leaves Eddys 12.20 p.m., arriving Petrolia 1.50 p.m., daily except Sunday, connecting at Oil City with the train which leaves Petrolia at 1 p.m., for St. Thomas, leaving Petrolia 3.40 p.m., carrying the school children, arriving Eddys 4.31 p.m., leaving Eddys at 4.35 p.m., arriving Courtright 5.35 p.m., making a total of 205 train miles per day.

The summer schedule, in effect June 30 until September 1, is with mixed trains, daily except Sunday, as follows:—

Lv. St. Thomas.. . . . .	8.30 a.m.
Ar. Petrolia.. . . . .	11.50 a.m.
Lv. Petrolia.. . . . .	1.10 p.m.
Ar. St. Thomas.. . . . .	4.10 p.m.

And another train:

Lv. Courtright.. . . . .	9.30 a.m.
Ar. Eddys.. . . . .	10.55 a.m.
Lv. Eddys.. . . . .	11.05 a.m.
Ar. Oil City.. . . . .	11.26 a.m.

Connecting with the train from St. Thomas—

Lv. Oil City.. . . . .	11.40 a.m.
Ar. Eddys.. . . . .	11.55 a.m.
Lv. Eddys.. . . . .	12.15 p.m.
Ar. Oil City.. . . . .	1.05 p.m.
Lv. Oil City.. . . . .	1.35 p.m.
Ar. Eddys.. . . . .	1.56 p.m.
Lv. Eddys.. . . . .	2.05 p.m.
Ar. Courtright.. . . . .	3.40 p.m.



making a total mileage of 177.56 miles per day, a saving of 27.44 miles per day, as compared with the winter service.

In 1929 it was proposed to reduce the service, which was daily, except Sunday, to three times a week. The time table was suspended and the matter has been heard. The service involves passenger traffic in general, passenger traffic of school children between certain points, which have already been mentioned, and which are dealt with in more particularity later; mail service and traffic in live stock. The analysis already given shows the movement is very largely one of freight. The mail service is next in importance in terms of dollars and cents, and then comes the passenger service with less than 5 per cent.

In the representations which have been made to the Board, the points emphasized have been live stock service, mail service, and the service of school children. While the railway at first proposed to replace the tri-weekly service by daily, except Sunday, it has since put in an amended proposal as follows:

The railways proposal, confirmed by Mr. McKee in his letter of April 3, provides all mixed service, daily except Sunday,—

Lv. St. Thomas.. . . . .	7.15 a.m.
Ar. Petrolia.. . . . .	10.35 a.m.
Lv. Petrolia.. . . . .	12.05 p.m.
Ar. Petrolia Jct.. . . . .	12.25 p.m.
Lv. " " . . . . .	12.30 p.m.
Ar. Courtright.. . . . .	1.20 p.m.

The same crew and equipment leaving—

Courtright.. . . . .	2.00 p.m.
Ar. Eddys.. . . . .	3.10 p.m.
(Not going into Petrolia)	
Lv. Eddys.. . . . .	3.21 p.m.
Ar. Oil City.. . . . .	3.43 p.m.
Lv. Oil City.. . . . .	3.50 p.m.
Ar. St. Thomas.. . . . .	6.20 p.m.

making a total mileage of 152.88, a saving of 24.68 miles as against the summer time-table, and a saving of 52.12 as against the winter time-table.

It will be noted that the proposed service will be run by one crew and one set of equipment. The hours of spread between starting out in the morning and winding up at night is 11 hours and 5 minutes, and overtime for the crew would not start until after the crew had been on duty 12 hours and 14 minutes.

The service which has been in operation during the months of July and August of the present year has not been taken exception to in point of freight, live stock service, or mail service. There has been no complaint as to the general passenger service. At the conference which took place during the course of the hearing at Petrolia, representatives of the Post Office Department were present and expressed their satisfaction with what was proposed in regard to the daily except Sunday service. There is a wide spread between the earnings and the operating expenses. This being so, the question arises whether the service offered being apparently satisfactory to the bulk of those using the railway, what particular conditions are there in connection with the factor of service for school children, and what weight should be given to these conditions. The following summary sets the stations already mentioned and shows the school children traffic revenue, revenue per ride, and mileage between the different stations concerned:—



Ex. 7.—STATEMENT *re* School Traffic, total rides and total revenue during 1929. The mileage figures are checked in from the time-table.

Between	Total rides	Revenue \$	Revenue Per ride Cts.	Mileage
Corey and Petrolia . . . . .	2,116	92 00	4.34	3.6
Oil Springs and Petrolia . . . . .	828	71 10	8.5	9.194
Oil City and Petrolia . . . . .	414	25 20	6.04	6.9
Petrolia Jet. and Petrolia . . . . .	1,334	58 00	4.3	4.9
Kimball and Petrolia . . . . .	2,300	300 00	13.0	14.52
Brigden and Petrolia . . . . .	3,726	384 75	10.3	11.27
Eddys and Oil Springs . . . . .	2,576	112 00	4.3	2.792
Brigden and Oil Springs . . . . .	92	8 70	9.6	10.756
Muncey and Melbourne . . . . .	552	28 80	5.2	5.8
Southwold and Melbourne . . . . .	1,425	122 45	8.5	9.9
Walkers and Alvinston . . . . .	690	36 00	5.2	5.4
Appin Road and Alvinston . . . . .	184	15 80	8.5	9.5

The Petrolia high school district includes the Town of Petrolia, Villages of Wyoming, Oil Springs and Brigden; the townships of Enniskillen, Dawn, Burke, and Plympton. The school traffic shown moving to Petrolia and return is concerned with the following points of origin—Corey, Oil Springs, Oil City, Petrolia Junction, Kimball and Brigden. From Oil Springs to Petrolia there were no rides in the period January to June 1929.

A further analysis of this traffic gives the following results:—

Between	Total rides	Miles	
Corey and Petrolia . . . . .	2,116	3.6	} 6,026 rides or 37.1% of the total are under five miles.
Petrolia Jet. and Petrolia . . . . .	1,338	4.9	
Eddys and Oil Springs . . . . .	2,576	2.792	
Muncey and Melbourne . . . . .	552	5.8	} 1,242 rides or 7.6% of the total are in the distance five to six miles.
Walkers and Alvinston . . . . .	190	5.4	
Oil City and Petrolia . . . . .	414	6.9	} 414 or 2.5% of the total are in the distance six to seven miles.
Oil Springs and Petrolia . . . . .	828	9.19	
Appin Road and Alvinston . . . . .	184	9.5	} 2,437 rides or 15.08% of the total are in the distance nine to ten miles.
Southwold and Melbourne . . . . .	1,425	9.9	
Brigden and Oil Springs . . . . .	92	10.756	} 92 or 0.72 of 1% of the total are in the distance ten to eleven miles.
Brigden and Petrolia . . . . .	3,726	11.27	
Kimball and Petrolia . . . . .	2,300	14.52	} 3,726 rides or 22.9% are in the distance eleven to twelve miles.
			} 2,300 or 14.1% are in the distance fourteen to fifteen miles.

The points not tributary to Petrolia are Muncey to Melbourne, Southwold to Melbourne, Walkers to Alvinston, Appin Road to Alvinston, and Brigden to Oil Springs. These points account for 2,852 trips. Between Appin Road and Alvinston there were no school trips in April, June, September, October, November, and December. Between Brigden and Oil Springs the only traffic was in January and April amounting to 92 trips.

The proposed train service, as above set out, takes care of the high school at Alvinston, arriving at 8.50 a.m. the same as at present. Eastbound it leaves at 4.25 p.m. as against 3.40 p.m. at present.

The school traffic east of Petrolia and covering Muncey, Melbourne, Walkers, Alvinston, Appin Road and Southwold, are taken care of by the proposed train service. The movements with which they are concerned may, therefore, be deducted. Taking out the number of rides involved at these points, the following statement analyzes the detail set out, also the rail mileage between the points involved:—

Between	Total rides	Miles	
Corey and Petrolia . . . . .	2,116	3.6	} 6,026 rides or 45% of the total are under five miles.
Petrolia Jct. and Petrolia . . . .	1,334	4.9	
Eddys and Oil Springs . . . . .	2,576	2.8	
Oil City and Petrolia . . . . .	414	6.9	} 3.1% of total rides are between six and seven miles.
Oil Springs and Petrolia . . . . .	828	9.19	
Brigden and Oil Springs . . . . .	92	10.756	} 6.1% of total rides are between nine and ten miles.
Brigden and Petrolia . . . . .	3,726	11.27	
Kimball and Petrolia . . . . .	2,300	14.52	} 0.6 of 1% of total rides are between ten and eleven miles.
			} 28.1% of total rides are between eleven and twelve miles.
			} 17.1% of total rides are between fourteen and fifteen miles.

It will be noted that the great bulk of the traffic of school children is into Petrolia. While the school children east of Petrolia can, with some readjustments, take advantage of the train service, it has to be recognized that what is proposed under the service does not meet the convenience of the school children in and out of Petrolia. The service which has been rendered has been a distinct convenience. The railway frankly admits that the proposed change will work inconvenience to the school children.

The question remains, having in mind the general nature of the business of the branch, is the Board justified in directing this particular service to continue? The operating cost is estimated at \$3.50 per mile, or if the revised figures, as computed, are used, \$3.36. During 1929 on the whole branch the total number of rides by school children amounted to 16,238, with a revenue of \$1,254.80. School children east of Petrolia Junction, and who for the reasons earlier explained are not involved in the present matter, are represented by 2,852 rides, with revenue to the company amounting to \$203.05; that is to say, the territory tributary to Petrolia supplied 13,386 rides with revenue of \$1,051.75. This gives an average receipt of 7.6 cents per ride. Under the system which has been in existence, two trains have been performing the work of the branch. While it is feasible, under the revised schedule, to perform the general service of the branch with one train, the situation is different for the school children moving into Petrolia. The service which allows the traffic to be consolidated in one train does not meet the requirements of those desirous of getting to school at an earlier hour. The trips under the arrangement which the Petrolia High School desires to have continued—the trips run for school children exclusively—were two trips between Petrolia Junction and Eddys—mileage 7.16—which are in connection with the movement to and from Court-right, and in addition one round trip Petrolia to Eddys—12.04 miles—these make a total of 38.40 miles per day. Operating on a basis of six days a week except Sunday, this gives a total of 12,019 train miles, which applied to \$1,051.75 received from school children tributary to Petrolia, gives an average of  $8\frac{7}{10}$  cents per train mile. If this is treated as added traffic, which dilutes the general expense, it will be noted that it falls far short of such an amount as would wipe out the existing spread, and it must also be remembered that east of Petrolia there is revenue from school children traffic which is going into the general average. It is true that it is less in amount than that centering around Petrolia. The difference is one of degree only.

In the light passenger traffic the school traffic is the significant factor. During the school months the daily average from Eddys to Petrolia inclusive is 23; while outbound it is 24. During the months of July and August the daily averages are 1.7 and 2 respectively.

In *Richmond Coaticook train service*, IX Board's Judgments and Orders, p. 274, it was set out by the late Chief Commissioner Carvell that while to some extent decision must be governed by the necessity of the service to the traveling public, he would not at the same time like to lay down the general principle



that every local train between main line points which *breaks even* between rates and expenditures should become a permanent institution. It is pointed out that in this particular case where the earnings amount to \$100 per day, the out-of-pocket expenses amount to \$90 per day, leaving \$10 for this particular train's contribution to general overhead expenses. Inferentially a different ruling would have been given had the rates fallen short of the *out-of-pocket costs*.

A similar matter was dealt with in Volume XV, Orders and Judgments of the Board, p. 119, in the *Application of the Municipal Council of the Parish of St. Stanislaus de la Rivière des Envies*, on behalf of the ratepayers of the municipality of St. Stanislaus, P.Q., for an order directing the Canadian National Railways to extend the local train service now running between St. Prosper and Quebec city to run to and from Shawinigan Falls. See also application of the Canadian Pacific Railway to reduce the service on the Slocan City Branch, XI, Board's Judgments and Orders, p. 219; Complaint *re* train service of Grand Trunk Railway between Killaloe and Eganville, XI, Board's Judgments and Orders 158 at p. 161.

Unless there are exceptional conditions to justify taking out a small section of a branch such as this and treating it differently from the average of the branch, it is necessary to look at the matter from an average standpoint. No evidence has been put forward which justifies the conclusion that the earnings on the mileage in question work out better than the general average. What is proposed by the railway is not such a revision as would eliminate the whole deficit, but a revision which will lessen the deficit. The average of the earnings for the three years comes out at \$140,954.70; the average cost at \$215,824.79, making an average deficit of \$74,870.09. During last year the total train mileage under the provisions of the winter timetable was 64,165 miles. Under the proposal of the railway the train mileage will be reduced to 47,851. That is to say, there would be a mileage of 152.88 per day—a saving of 52.12 miles as against the winter timetable. If the reduced train mileage of 47,851 is multiplied by an average cost of \$3.50 per train mile, this would give a total cost, in round numbers, of \$168,125—a reduction in round numbers of \$46,389. This would produce a train mile revenue of \$2.94, which gives a reduction, but still leaves a deficit of \$27,481. The service which the train has been rendering to the school children creates a convenience. It is to be regretted that conditions on the branch line concerned are not such as to justify its continuance. The proposed six-day-a-week mixed service, as proposed by the railway at the hearing and subsequently confirmed by letter, may become operative on Wednesday, October 1.

OTTAWA, September 6, 1930.

Commissioner Norris concurred.

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ORDER No. 45275

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.* File No. 34822.2

THURSDAY, the 21st day of August, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 18 to Tariff C.R.C. No. E-1230.

Supplement 10 to Tariff C.R.C. No. E-1236.

Supplement 10 to Tariff C.R.C. No. E-1257.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 45290

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Swift Current Northwesterly Branch between Coronation and Youngstown, from mileage 187·54 to mileage 227·04.*

File No. 16645

WEDNESDAY, the 27th day of August, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of the Engineer of the Board, and the filing of the necessary affidavit,—

*It is ordered:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its Swift Current Northwesterly Branch between Coronation and Youngstown, from mileage 187·54 to mileage 227·04.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45298

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its Archive-Wymark Branch (Archive to Coderre), mileage 0·0 to 38·68:*

File No. 29353.

THURSDAY, the 28th day of August, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of the Engineers of the Board, and the filing of the necessary affidavit,—

*The Board orders:*

That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Archive-Wymark Branch (Archive to Coderre), mileage 0·0 to 38·68.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45309

*In the matter of the application of G. C. Ransom, Agent and Attorney, hereinafter called the "Applicant," for and on behalf of interested carriers, for permission to publish and file supplement to Canadian Freight Association Tariff C.R.C. No. 486 upon less than statutory notice, and correct clerical error whereby, in Item No. 140 of said tariff, provision is made for the application of 4th class rates in place of 3rd class rates as at present in effect in Canadian Freight Association Tariff C.R.C. No. 111.*

File No. 27612·48

SATURDAY, the 30th day of August, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*C. LAWRENCE, *Commissioner.*

Upon its appearing that a clerical error has been made in publishing Item 140 in Canadian Freight Association Tariff C.R.C. No. 486, by providing for application of 4th class rates where the intended provision was to provide for application of 3rd class rates,—

*The Board orders:* That the applicant be, and he is hereby, permitted to publish, effective September 25, 1930, a supplement to Canadian Freight Association Tariff C.R.C. No. 486, correcting clerical error and establishing 3rd class rates in connection with Item 140 of said tariff.

S. J. McLEAN,  
*Assistant Chief Commissioner.*





# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, October 1, 1930

No. 15

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*In the matter of Order of the Board No. 35735, dated 27th of October, 1924, and switching charge assessed by the Canadian National Railways on Argentine corn from Elevator at Ocean Terminals to interchange with the Dominion Atlantic Railway at Richmond Yard.*

File No. 21700.11

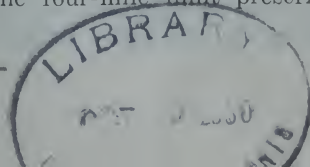
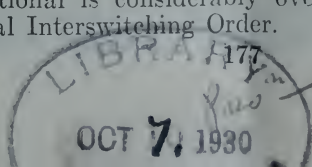
BY THE BOARD:

This matter concerns a controversy between the Dominion Atlantic Railway and the Canadian National Railways with respect to the switching charge of the Canadian National Railways from ocean terminals to interchange with the Dominion Atlantic Railway at Richmond yard, on Argentine corn arriving at Halifax by water, placed in the elevator at ocean terminals, and reshipped thence to points on the Dominion Atlantic Railway. Written submissions have been filed setting forth the contentions of the railway companies named.

It is set out by the Dominion Atlantic Railway that the Canadian National Railways have until recently assessed on this traffic a switching rate of 1 cent per 100 pounds for the movement above described; that recently the local agent of the Canadian National Railways at Halifax was instructed by his Traffic Department to assess a local switching rate of 3 cents per 100 pounds on said traffic when for Dominion Atlantic Railway points competitive with the Canadian National Railways; and reference is made to Order of the Board No. 35735 and it was stated said order made no distinction between competitive and non-competitive destinations and is applicable on this ex-water traffic. The Canadian National Railways submit that Order No. 35735 was intended particularly to cover the movement of apples from points on the Dominion Atlantic Railway to Halifax for export; that said order is intended to apply only to through import and export traffic and not to what are domestic, or become domestic, shipments. Their submission further sets out:—

“This Argentine corn is not, I understand, consigned to any particular interior mill, but is placed in the elevator at Halifax and is then sold as a domestic commodity, in so far as transportation is concerned, to the various mills or parties who require it.

“The point of interchange between the Dominion Atlantic and the Canadian National is considerably over the four-mile limit prescribed by the General Interswitching Order.





"Instructions have been issued that this corn, under the circumstances above outlined, should be handled under domestic switching rates of 1½ cents per 100 pounds to non-competitive destinations, as per Item 50, C.N.R. Tariff C.R.C. E-1456, and 3 cents per 100 pounds to competitive destinations, as per Item 995 of Tariff C.R.C. 875."

With regard to what is set out in the first paragraph above quoted, the Dominion Atlantic Railway state they have been advised by the Maple Leaf Milling Company, through whom these cargoes are placed in storage, that 90 per cent of this corn is contracted for by the inland mills with them, and they, in turn, place the order for the cargo which is stored ex-ship in the elevator at Halifax and is forwarded to the mills as ordered out at their convenience.

So far as it is relevant to the matter here in issue, Order No. 35735 provided:—

"1. That the charge of the Canadian National Railway Company for switching carload traffic (ex water or for furtherance by water) to or from the Dominion Atlantic Railway, between Halifax yards and deep-water terminals, shall be one cent per one hundred pounds, subject to the minimum weight of the line carrier's tariff, but in no case less than—

\$3 per car on 7th, 8th and 10th class traffic (as per Canadian Freight Classification).

\$5 per car on all other traffic.

"2. That the Dominion Atlantic Railway Company absorb not less than one-half of the charge, as prescribed by section 1 hereof; tariffs to provide accordingly.

"3. That upon publication by the Canadian National Railway Company of the same switching charge as prescribed by section 1 hereof, on the same traffic, between Halifax yards and Richmond and ocean terminals, the Dominion Atlantic Railway Company make the same absorption as prescribed in section 2 hereof and amend its tariff schedules accordingly."

It will be observed that the only switching charge imposed on the Canadian National Railways covered a switching movement between the Dominion Atlantic Railway interchange and deepwater terminals. The traffic that is here in question is a switching movement from Canadian National Railways ocean terminals to interchange with the Dominion Atlantic Railway. However, when the matter of switching charges at Halifax covered by this order was before the Board for consideration, the position of the Canadian National Railways was that there should be absolute equality from the rate standpoint with respect to this traffic when handled through either deepwater or ocean terminals, but as the latter terminals involved a haul of about six miles, and it was, therefore, beyond the interswitching distance prescribed by the Board's General Interswitching Order, the Board made no direction beyond to state that if the Canadian National Railways, to bring about the desired equality, voluntarily established the same switching charge to ocean terminals as directed to deepwater terminals, the Board would direct the Dominion Atlantic Railway to make the same absorption. This brief explanation makes clear the reason for section 3 of the order above quoted.

Pursuant to Order No. 35735, the Canadian National Railways published the switching rate directed in section 1 thereof and also established the same charge for movements prescribed in section 3. In the current interswitching tariff of the Canadian National Railways, C.R.C. No. E-1456, in section 2B,

headed "Special interswitching rates for distances not exceeding four miles," there is the following provision for interswitching at Halifax:—

Between	And	Rates
Interchange with Dominion Atlantic Railway.	* Deepwater terminals, Richmond piers. (Applicable only on traffic ex-water or for furtherance by water, and exclusive of wharfage and handling charges.)	1 cent per 100 pounds.  Subject to the minimum weight of the line carrier's tariff, but in no case less than \$3 per car on traffic classifying 7th, 8th and 10th class and \$5 per car on all other traffic.

\* Board of Railway Commissioners Order No. 35735 dated Ottawa, Ont., October 27, 1924.

NOTE.—See item 50 for rate to and from ocean terminals.

In section 2C of the same tariff, under the head of "Special interswitching rates for distances exceeding four miles," Item 50, applying at Halifax reads:—

Between	And	Rates
Interchange with Dominion Atlantic Railway.	Armdale Siding Ocean Terminals. (Applicable only on domestic traffic from or to non-competitive points.) Ocean terminals. (Applicable only on traffic ex-water or for furtherance by water, and exclusive of wharfage and handling charges.)	1½ cents per 100 pounds. Minimum \$5 per car.          * 1 cent per 100 pounds.

\* Subject to the minimum weight of the line carrier's tariff, but in no case less than \$3 per car on traffic classifying 7th, 8th and 10th class and \$5 per car on all other traffic.

It will be noted from the submissions of the Canadian National Railways that they are apparently endeavouring to make a distinction between through import and export traffic as compared with what they describe as domestic shipments. There is certain import and export traffic specifically provided with special import or export commodity rates lower than domestic rates, but there are import and export shipments moving for which there is no other provision than the local or domestic rate.

Order No. 35735 reads: "Traffic ex-water or for furtherance by water." The interswitching rates of 1 cent per 100 pounds published by the Canadian National Railways between deepwater terminals and ocean terminals and interchange with the Dominion Atlantic Railway, as above set out, are also shown and so stated in the tariff as "applicable only on traffic ex-water or for furtherance by water and exclusive of wharfage and handling charges."

The order and the tariff, therefore, relates to traffic ex-water or for furtherance by water and the said provisions do not make any distinction which is dependent upon whether it moves under a special import or export rate or at a local or domestic rate. It is, of course, admitted that this Argentine corn arrives at Halifax by water and when it is shipped to a point on the Dominion Atlantic Railway, the Board considers the tariff clearly provides for an inter-switching rate of 1 cent per 100 pounds from ocean terminals to interchange with the Dominion Atlantic Railway. Obviously, this published inter-switching toll, rather than a local switching charge, is applicable.

#### RULING

The ruling of the Board, therefore, is that on the question presented, on the traffic described, the inter-switching rate of 1 cent per 100 pounds published in Item 50, section 2-C of Canadian National Railways Tariff C.R.C. E-1456, is applicable.

OTTAWA, September 10, 1930.



Application of T. H. Estabrooks Company, Limited, St. John, N.B., for review, etc., of the Board's Judgment dated October 18, 1928.

File 34552

### JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The application by counsel for the Estabrooks Company, Limited, was to the effect that the judgment of October 18, 1928, should be reviewed and rescinded, or changed or altered or varied, and (or) that the whole of the said complaint should be reheard before the full Board.

The original hearing had been before Commissioner Lawrence and myself. Following the application of January 8, 1929, a sitting was arranged for Saint John, N.B., on September 19, 1929; the notice of hearing indicating that the evidence to be given at the sitting was to be confined to the detriment accruing to the applicants' business as the result of unjust or discriminatory rates and with the unjust and discriminatory character of said rates. This hearing was before Commissioner Lawrence and myself.

In the correspondence on file it is made clear that the only point upon which the applicants were to be heard at the Saint John hearing was that of establishing such detrimental affection, if any such could be said to exist; and if a *prima facie* case to that effect were made out, opportunity was to be afforded to the parties in opposition to meet it, if they wished so to do. The question is whether such a *prima facie* case has been established.

Evidence was submitted at the hearing at Saint John and copies of this were furnished to the other parties interested.

At the hearing at Saint John, evidence was given which was tied up to a series of exhibits numbered A-E. Exhibit A is intended to show the detriment to which the Winnipeg branch is subjected by the existing rate adjustment. The rail rates from Vancouver to Winnipeg and Saint John to Winnipeg are set out, and the differences resulting from same are also set out. The exhibit shows the business of the applicant through the Winnipeg branch in the period 1913-1928. There is shown a table of pounds net turnover and pounds gross turnover. The difference is the tare attributable to packing, etc. In general, in the period in question, the pounds net turnover are about 78 per cent of the pounds gross turnover. In the years 1924-28 there are differences: in 1924, the pounds net turnover being 83 per cent of the pounds gross turnover; in 1925, 75 per cent; 1926, 82 per cent; 1927, 74 per cent; and in 1928, 83 per cent.

An analysis of the business in the period in question in terms of pounds net turnover shows that the business is of a fluctuating nature:—

1913	16% under 1913
1914	5% under 1914
1915	21% over 1915
1916	5% over 1916
1917	13% under 1917
1918	21% over 1918
1919	3% under 1919
1920	27% under 1920
1921	6% under 1921
1922	21% over 1922
1923	2% over 1923
1924	6% under 1924
1925	4% under 1925
1926	9% over 1926
1927	11% under 1927
1928	

A further analysis of the figures of the pounds net turnover during the period 1913 to 1928 shows that the peak year was 1919, with a total of 648,200



pounds. The average annual movement in the period 1913-19 was 573,058, while in the period 1920-28 the average was 513,591. That is to say, the average for 1913-19 was 11·5 per cent higher than the average for 1920-28. In the first group, the low is 481,600 and the high 648,200, or a spread of 166,600 pounds, while in the second group, with a low of 485,417 and a high of 629,500, there is a spread of 144,083 pounds.

In the judgment of October 18, 1928, *18 Board's Judgments and Orders*, at p. 327, reference was made to the fact that the telegram of the Estabrooks Company on file, in connection with the complaint, set out that it had only recently learned of the rate adjustment complained of. It is stated in another connection that they only knew of the rate competition about 1925. On p. 331 of the judgment, it was stated that they had only learned during 1925 of the commodity rate on tea from Vancouver east. It will be noted that the fluctuations prior to 1925 are comparable with the fluctuations since.

In the period 1913-25, with an average of 543,370 pounds, there is a spread of 215,000 pounds. In the period 1926-28, with an average of 510,015 pounds, or 7 per cent less, there is a spread of 60,312 pounds. In the period 1913-25, four years are mainly responsible for the higher average, viz., 1913, 601,906 pounds; 1917, 615,500 pounds; 1919, 648,200 pounds; 1920, 629,500 pounds; or a total of 2,495,106 pounds. Deducting this total, the annual average for the remaining nine years of the period is 507,626 pounds.

Exhibit B is a comparison of commodity and class rates from Vancouver to commodity points, with class rates from Saint John to same points.

Exhibit C shows the imports of black and green tea at specified ports 1907-09 and 1918-19. Included in this list of specified ports are Saint John, Winnipeg, and Vancouver.

It was stated by Mr. Miles, at p. 3320, Evid., Vol. 548, that the exhibit was put in to show the general trend as to Saint John and Vancouver.

Exhibit D is an exhibit of all rail rates Saint John to Winnipeg from 1913 to date, setting out the rate differences which are claimed to be in favour of Vancouver.

Exhibit E is a map showing rate zones.

The allegations as to detriment are set out on pp. 3316-3324 of the evidence.

(1) At p. 3316, Mr. Miles, questioned by counsel as to the difference between the period 1913-19 and the figures of the latter year, answered that it showed a handicap of rates. As already pointed out, the fluctuations are given for the whole period, and sharp fluctuations were evident prior to 1925. (2) At pp. 3323-24, in answer to questions directed to him by his counsel, Mr. Miles said that "the exhibit set forth the detriment to which his firm had been subjected, as claimed by him"; that the principal assertion, as backed up by the exhibit, is that the Estabrooks firm had made no progress in the West. (3) That the Estabrooks firm had not progressed with the new development of the West. (4) That the Winnipeg house cannot meet the trade created from the Vancouver house under the low commodity distributing rate.

The question now arises whether a *prima facie* case of discrimination has been made out. One criterion of unjust discrimination is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place.

*Wegenast vs. G.T.R.*, 8 C.R.C., 42, at p. 45.

*Toronto and Brampton vs. G.T. and C.P.R. Cos.*, 11 C.R.C. 370, at p. 375.

*Massiah vs. C.P.R.*, 4 Board's Judgments and Orders, p. 105.

Where no evidence was submitted that any rate advantage possessed by any competitor had rendered it more difficult for the applicant to do business, the allegation of unjust discrimination was held to be unfounded. *Ontario Paper Co. vs. G.T.R.*, 24 C.R.C., 177.

In general, some affirmative evidence is required in connection with the allegation that discrimination exists. Evidence is required as to how rates complained of react to the detriment of the applicant. *Spanish River Pulp and Paper Co.*, 12 Judgments and Orders, 279.

In the first *Brampton Case*, 8 C.R.C., 45, it was set out: (1) Brampton witnesses stated that reduced fares would have the effect of increasing the real estate values in Brampton, and that persons now residing in Toronto would move to Brampton; (2) on the other hand, it was stated in the judgment that there is no evidence that any one has chosen to buy property in Oakville who would have purchased in Brampton had reduced fares to that town been in effect; (3) there was evidence that no one had removed from Brampton to Oakville consequent upon reduced fares to Oakville; (4) there was evidence that so far as known no one had removed from Toronto or Oakville or elsewhere who would have chosen Brampton had reduced fares existed to that town. The findings of the judgment all point to the necessity of some affirmative evidence.

In *City of Toronto and Town of Brampton vs. C.P.R. and G.T.R. Cos.*, 11 C.R.C., 371, at p. 375, Chief Commissioner said:—

“Although the onus is on the railway company, the applicant should in all of these cases give some affirmative evidence that the exercise of the railway’s discretion is unfair, unreasonable, or results in discrimination.”

Judgment was rendered May 26, 1930, in the application of the *James Goldie Co., Ltd.*, re stop-offs—20 Board’s Judgments and Orders, p. 93. In the course of the evidence it was alleged that the existing arrangement in regard to stop-off was unjustly discriminatory and that business had been lost as a result of this. Counsel for the Goldie Company introduced evidence to show the difficulties of doing business under the existing arrangements, and indicated specifically where business had been lost as a result of it. See evidence of *Walter A. Hewitt*, Vol. 556, p. 717, especially at p. 719; also p. 723; evidence of J. H. Fowler, salesman of the James Goldie Company, p. 730 and following pages.

I do not see that reliance on the rate material advances the matter. The rate material was before the Board in a former hearing. Variations in amount of sales are not conclusive in the absence of evidence showing specifically that the rate factor was the one responsible for the variation. There are variations in the volume of business—reference has been made to this. Reference has been made to a drop in the average; but, in business, various factors enter in, and what we are concerned with is the situation where the downward drop is specifically tied up to a variation in rate.

On consideration, I do not think there has been an affirmative showing of unjust discrimination or unjust preference.  
September 11, 1930.

Commissioner Lawrence concurred.



## ORDER No. 45327

*In the matter of the complaint of the Municipal Council of the District of Surrey, in the Province of British Columbia, against the changes in train service on the Great Northern Railway; and that trains Nos. 358 and 355, between Vancouver and Seattle, under the new schedule, do not stop on flag at Crescent.*

File No. 27563.119

FRIDAY, the 5th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the complaint, and upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

*The Board orders:* That the Great Northern Railway Company be, and it is hereby, directed to provide the following train service, effective at once, namely: Trains Nos. 355 and 358 to stop on flag at Crescent Beach daily up to and including the 15th day of September; and, from September 16 to May 31, inclusive, train No. 355 to stop on flag on Saturday only and train No. 358 to stop on flag on Sunday only at Crescent Beach aforesaid.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45333

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Sturgis-Peesane Branch from a point at Mileage 39.60 (Reserve) northwesterly for a distance of 31.07 miles, to a point distant 29.0 miles southeasterly from the junction of the said branch with the Tisdale Subdivision of the Canadian Northern Railway Company at Crooked River, in the Province of Saskatchewan; also the north leg of wye 0.26 miles in length, located at the junction with the Hudson Bay Junction Southerly Branch at Reserve.*

File No. 35964.14

MONDAY, the 8th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Sturgis-Peesane Branch from a point at mileage 39.60 (Reserve) northwesterly for a distance of 31.07, to a point distant 29.0 miles southeasterly from the junction of the said branch with the Tisdale Subdivision of the Canadian Northern Railway Company at Crooked River, in the province of Saskatchewan; also the north leg of wye 0.26 miles in length, located at the junction with the Hudson Bay Junction Southerly Branch, at Reserve.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 45334

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

MONDAY, the 8th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 32 to Tariff C.R.C. No. E-1235.  
Supplement 33 to Tariff C.R.C. No. E-1235.  
Supplement 34 to Tariff C.R.C. No. E-1237.  
Supplement 27 to Tariff C.R.C. No. E-1244.  
Supplement 22 to Tariff C.R.C. No. E-1255.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45344

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 9th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* that the tolls published in Supplement No. 20 to Tariff C.R.C. No. E-1243, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45350

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to publish and file supplements to certain class rate tariffs upon less than statutory notice in so far as concerns some advances in rates contained in the said supplements.*

File No. 27612.49

WEDNESDAY, the 10th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Whereas, by Order No. 45324, dated September 6, 1930, the Board authorized the Canadian National Railways to publish and file Supplement No. 2 to its Tariff C.R.C. No. E-1539, on less than statutory notice as to the advances

in rates contained therein, for the reason that it was impracticable to indicate the changes by symbols; and it appears to be in the public interest that the rates in the said supplement be made effective as early as possible, owing to the numerous reductions in rates therein published;

And whereas the revision of rates provided for by the supplements to tariffs covered by this application is for the purpose of establishing such rates on the same basis as published by the Canadian National Railways in the tariff schedule referred to in the preceding paragraph hereof, and it is desirable that the revised rates of both companies be made effective on the same date,—

*The Board orders:* That the applicant company be, and it is hereby, permitted to publish and file, on one day's notice, supplements to the following class rate tariffs, giving effect to the above-mentioned revision, namely, tariffs—

C.R.C. Nos. E-3219.  
3220.  
3221.  
3222.  
3224.  
3990.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 45376

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order of the Board No. 44817, dated June 4, 1930.*

File No. 34822.8

FRIDAY, the 11th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the normal rate established by Order No. 44817, dated June 4, 1930, was in error,—

*It is ordered:* That the figure "4" in the last line of section 2 of Order No. 44817, dated June 4, 1930, be struck out and that in lieu thereof the figures "3 $\frac{3}{4}$ " be inserted.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 45381

*In the matter of the application of the Michigan Central Railroad Company, hereinafter called the "Applicant Company," for leave to discontinue the train service on its St. Clair Branch, as set forth in time-table No. 120.*

File No. 25851.

THURSDAY, the 11th day of September, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Petrolia, March 18, 1930, in the presence of counsel for and representatives of the applicant company, the Post Office Department, the Municipalities of West Lamb-

ton and East Lambton, the Town of Petrolia, Township of Dawn, Township of Moore, County of Lambton, Committee of Residents, Brigden, and Oil Springs, and what was alleged; and upon reading the written submissions filed,—

*The Board Orders:* That, effective Wednesday, October 1, 1930, the applicant company be, and it is hereby, authorized to provide the following train service on its St. Clair Branch, namely:—

	101	102	103	104	105	106
St. Thomas. . . . .	7.15a	.....	.....	.....	.....	6.20p
St. Clair Jct. . . . .	s 7.30a	.....	.....	.....	.....	s 6.05p
Air Line Crossing . . . .	f 7.35a	.....	.....	.....	.....	f 5.50p
Southwold. . . . .	f 7.43a	.....	.....	.....	.....	f 5.38p
Muncey. . . . .	f 7.53a	.....	.....	.....	.....	f 5.29p
Melbourne. . . . .	s 8.05a	.....	.....	.....	.....	f 5.17p
C.N.R. Crossing . . . . .	f 8.13a	.....	.....	.....	.....	f 5.05p
C.P.R. . . . .	8.18a	.....	.....	.....	.....	4.53p
Appin Road . . . . .	f 8.27a	.....	.....	.....	.....	f 4.50p
Walkers . . . . .	f 8.36a	.....	.....	.....	.....	f 4.40p
Alvinston . . . . .	s 8.50a	.....	.....	.....	.....	s 4.25p
Inwood . . . . .	s 9.15a	.....	.....	.....	.....	s 4.10p
Weidman. . . . .	f 9.25a	.....	.....	.....	.....	f 4.05p
Glen Rae . . . . .	f 9.30a	.....	.....	.....	.....	f 4.01p
Holmsdale. . . . .	f 9.35a	.....	.....	.....	.....	f 3.57p
Eddys. . . . .	.....	.....	.....	3.16p	3.21p	.....
Oil Springs. . . . .	.....	.....	.....	s 3.10p	s 3.33p	.....
Oil City. . . . .	10.00a	.....	.....	3.00p	.....	3.50p
	s 10.05a	.....	.....	s 3.00p	.....	.....
Petrolia Jct. . . . .	s 10.15a	12.25p	12.30p	s 2.50p	.....	.....
Corey . . . . .	f 10.21a	f 12.19p	.....	.....	.....	.....
Petrolia. . . . .	10.35a	12.05p	.....	.....	.....	.....
Brigden. . . . .	.....	.....	s 12.55p	s 2.30p	.....	.....
Kimballs. . . . .	.....	.....	f 1.02p	f 2.20p	.....	.....
Courtright Jct. . . . .	.....	.....	1.16p	2.05p	.....	.....
Courtright. . . . .	.....	.....	1.20p	2.00p	.....	.....

S. J. McLEAN,  
Assistant Chief Commissioner.

ORDER No. 45362

*In the matter of the application of the Dominion Atlantic Railway Company for an Order suspending Supplement No. 26 to Canadian National Railways Tariff C.R.C. No. E-1240, section 1, page 3, providing for restriction of bituminous coal rates to Canadian National Railways delivery, and stipulating that they are not applicable on traffic destined through to stations on the Dominion Atlantic Railway.*

File No. 37530

FRIDAY, the 12th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., Chief Commissioner.  
S. J. McLEAN, Assistant Chief Commissioner.

Upon reading what is filed in support of the application and on behalf of the Canadian National Railways; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

*It is ordered:* That the portion of section 1 of Supplement No. 26 to Canadian National Railways Tariff C.R.C. No. E-1240 which adds a symbol and a note restricting the rates to Truro to Canadian National Railways delivery only, and stipulates that they are not applicable on traffic destined through to stations on the Dominion Atlantic Railway, be, and it is hereby, suspended pending a hearing by the Board.

H. A. McKEOWN,  
Chief Commissioner.



## ORDER No. 45395

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic portion of its Langdon North Branch (Acme to Empress) from mileage 84.46 to mileage 86.86.*

File No. 26662.42

FRIDAY, the 12th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic portion of its Langdon North Branch (Acme to Empress) from mileage 84.46 to mileage 86.86.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45398

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Mawer Southwesterly Branch from mileage 0 at the junction of the said branch with the Central Butte Subdivision of the Grand Trunk Pacific Branch Lines Company at mileage 86.49, southwesterly, to present end of track, a distance of 35.0 miles; also the northwest leg of the wye at the said junction 0.19 miles in length.*

File No. 36775.9

FRIDAY, the 12th day of September, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer,—

*The Board orders:* that the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Mawer Southwesterly Branch from mileage 0, at the junction of the said branch with the Central Butte Subdivision of the Grand Trunk Pacific Branch Lines Company at mileage 86.49, southwesterly to present end of track, a distance of 35.0 miles; also the northwest leg of wye at the said junction, 0.19 miles in length: provided the rate of speed of trains operated over the said branch be limited to fifteen miles an hour.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45391

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Melfort-Aberdeen Branch, as particularly hereinafter set forth.*

File No. 36497.7

MONDAY, the 15th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Melfort-Aberdeen Branch,—

- (1) from the junction of the said Branch with the St. Brieux Subdivision of the Canadian Northern Railway Company at mileage 1·91 (near Melfort, Saskatchewan), to the junction with the Langham Subdivision of the Canadian Northern Railway Company at mileage 52·06 (near Aberdeen), a distance of 87·60 miles;
- (2) the west leg of the wye at the said junction with the St. Brieux Subdivision, 0·28 mile in length;
- (3) The east connection with the Cudworth Subdivision of the Grand Trunk Pacific Railway Company at mileage 65·99 (at Wakaw), 0·41 mile in length; and
- (4) the west connection with the said Cudworth Subdivision at mileage 65·73 (at Wakaw), 0·18 of a mile in length; and
- (5) the east leg of the wye at the junction of the Langham Subdivision, 0·24 of a mile in length.

And the Board further orders that the applicant company be, and it is hereby, authorized to operate its trains over the grade level crossing of the Cudworth Subdivision of the Grand Trunk Pacific Railway Company at mileage 55·88, subject to and upon the condition that all trains be brought to a stop and flagged over the crossing.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45416

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Lanigan to Prince Albert Branch, mileage 0, at Lanigan, to mileage 93·87, near Fenton, Saskatchewan.*

File No. 36655.40.

TUESDAY, the 16th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

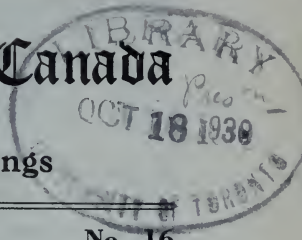
*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Lanigan to Prince Albert Branch mileage 0, at Lanigan to mileage 94·42 near Fenton, Saskatchewan.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings



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No. 16

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*Application of David Spencer, Limited, Vancouver, B.C., for interpretation by the Board of the provision "Felt Carpet Lining" as contained in Canadian Freight Classification No. 17.*

File No. 33365.85.5

**BY THE BOARD:**

Under date of June 24, 1930, David Spencer, Limited, Vancouver, B.C., wrote the Board, also enclosing copies of correspondence with the Canadian Pacific Railway, concerning the classification rating properly applicable on a less than carload shipment of felt carpet lining made from Kitchener, Ont., to Vancouver, B.C., on January 26, 1929, covered by the applicant's claim No. 3993 and Canadian Pacific Railway Company's claim No. 375327. The Board is asked to give a ruling as to the classification item applicable. The matter has subsequently been developed by written submissions filed by the railway company and the applicant.

In Canadian Freight Classification No. 17, effective September 21, 1925, on page 101, under the distinctive heading "dry goods," provision for carpet lining was made by items 3 to 14 as shown below (as this was a less than carload shipment, the less than carload classification ratings only are given):—

Item	L.C.L.
3 CARPET LINING—	
4 Felt or Paper—	
6 Indented—	
In bales, boxes, bundles, crates or rolls . . . . .	3
8 Plain—	
In bales, boxes, bundles, crates or rolls . . . . .	3
10 Other than indented or plain—	
In bales, boxes, bundles, crates or rolls . . . . .	2
12 Grass—	
In bales, bundles or rolls . . . . .	2
In boxes, or crates . . . . .	2
14 Carpet Lining, N.O.I.B.N.—	
In bales, bundles or rolls . . . . .	2
In boxes, or crates . . . . .	2

In Supplement 3 to Classification No. 17, effective February 7, 1927, the rating in item 8, above quoted, was reduced to fourth class without any other change in description. The foregoing sets out the classification provisions in effect at the time the shipment here in question moved. In Classification No. 18, effective July 29, 1929, the same provisions as contained in Classification 17 were continued, but in Supplement 1 to Classification No. 18, effective April 14,



1930, the classification provision and descriptions for carpet lining were amended to read as follows (less than carload ratings only shown):—

DRY GOODS—	L.C.L.
Carpet Lining—	
Paper or Paper Felt—	
Indented—	
In bales, boxes, bundles, crates or rolls . . . . .	3
Plain—	
In bales, boxes, bundles, crates or rolls . . . . .	4
Other than indented or plain—	
In bales, boxes, bundles, crates or rolls . . . . .	2
Carpet or Rug Cushions, hair felt—	
In bales, boxes, crates or rolls . . . . .	2

The provisions in Classification No. 18 are shown merely for the purpose of comparison. It will be noted that item 4, page 101, in Classification No. 17, made provision for "felt" carpet lining or "paper" carpet lining without any qualification whatever of the words "felt" or "paper." In Classification No. 18, as amended by Supplement No. 1, the former term "felt" has been changed to read "paper felt"; and there has also been added a provision for "carpet or rug cushions, hair felt." In other words, the word felt has been qualified in its description.

The word felt is a broad generic term. Stormonth's Dictionary defines felt as being a "cloth or stuff made of hair, wool, or other substance, by rolling and pressure, and not by weaving." Similar definitions are to be found in the Oxford Dictionary and Twentieth Century Edition of the Standard Dictionary, the former describing felt as, *inter alia*, "A thickly matted mass of hair or other fibrous substance," and in the latter "A woven fabric whose fibres are matted by shrinking or otherwise." As above set out, as used in connection with the provision for carpet lining, the word "felt" in Classification No. 17 was not, in any way, qualified or restricted. In the classification, under other headings, there are various qualified provisions for items of felt. For example, under the heading of insulating material, there is provision for such material when made of flax felt, hair felt mineral wool, wood fibre felt, flax felt, hair felt or hemp felt. There are also provisions for asbestos building roofing or sheathing felt; mattress or upholstering felt, papermakers' felt, etc.

Applicant described the shipment as felt carpet lining and stated it was used for carpet lining, and it is not contended or alleged by the railway company that the shipment was not carpet lining and used as such.

While fourth class rating was claimed under item 8, page 101, of Classification No. 17 as amended by Supplement 3 applying on plain felt carpet lining, in further correspondence applicant states the carpet lining was indented and has amended his claim to third class rating, item 6, page 101, Classification No. 17.

In the various communications with the railway company, different positions are taken as to the rating applicable. The Canadian Pacific Railway Freight Claims Agent, in letter dated July 26, 1929, states that according to the sample obtained, shipment did not consist of paper carpet lining and item 14, page 101, should apply. This advice ignores the provision for felt carpet lining, item 4. In letter dated October 11, 1929, Canadian Pacific Railway Freight Claim Agent states the question of classification was taken up with the Canadian Freight Association, and according to their ruling, shipment comprised hair felt and should be classified under item 7, page 166. The latter item applies on insulating material, not on carpet lining, and is, therefore, irrelevant as being applicable on a shipment consisting of felt carpet lining. In a letter dated January 31, 1930, to applicant, the freight claim agent states that sample of the shipment shows it as consisting of hair felt and not paper felt, and as hair felt and saddlery felt are provided for at second class rating, the rating provided for hair felt should be assessed against the shipment in question. In

letter to the Board dated August 7, 1930, the railway company sets out the classification provisions which have already been quoted herein, and states that the shipment in question was described by shippers as "carpet felt" and that upon arrival at Vancouver same was examined by the Canadian Freight Association inspector, and found to consist of "carpet lining hair felt." They further state:—

"The commodity being made of hair with a burlap back, the second class rate was applied."

This statement is not very clear, as it does not conform with the description placed upon the shipment by the Canadian Freight Association inspector, which is already referred to. Perhaps the point here made is that the presence of burlap excludes the shipment from coming under the broad description "felt," but in none of the previous advices of the railway company to the applicant, and stated to be based on samples of the shipment, nor in the Canadian Freight Association inspector's report, is there any reference to burlap, and in any event, according to the descriptions given, the Board considers the broad term "felt" without qualification or restriction such as has subsequently been introduced into the classification for this carpet lining, covers a shipment of the character here described.

#### RULING

The ruling of the Board, therefore, is that the provision in Canadian Freight Classification No. 17, by item 4, page 101, for felt carpet lining, is applicable on a shipment as here described, and its proper less than carload rating would depend on whether same was indented, plain, or other than indented or plain, items 6, 8, and 10, page 101. The applicant, as well as the shipper, states the shipment consisted of carpet lining, indented, which has not been disputed by the railway company, and the provision for indented felt carpet lining shipped in bales, boxes, bundles, crates or rolls, is third class rating, less than carloads, item 6, page 101, Canadian Freight Classification No. 17, as in effect at the time this shipment moved.

OTTAWA, September 30, 1930.

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#### GENERAL ORDER No. 487

*In the matter of the application of Building Products, Limited, of Montreal, Province of Quebec, for permission to supply Solid Fiberboard boxes for shipping freight over railways in Canada under Shipping Container Specifications numbers 23A, 23B, 23C, 23D, and 23E of Interstate Commerce Commission Regulations for the transportation by rail of explosives and other dangerous articles by freight.*

File No. 1717.38.2

MONDAY, the 22nd day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that a revision of the rules for the transportation by freight of explosives and other dangerous articles over railways in Canada is

now in progress, and the railways having stated that they have no objection to the immediate use of the said containers, pending the publication and approval by the Board of such rules,—

*It is ordered:* That, effective October 1, 1930, solid fiberboard boxes, complying with Container Specifications 23A, 23B, 23C, 23D, and 23E, published in Agent B. W. Dunn's Tariff No. 2 on file with the Board under C.R.C. No. 2, may be used for shipping freight over railways in Canada subject to the Board's jurisdiction.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 45456

*In the matter of the application of the Michigan Central Railroad Company (The New York Central Railroad Company, Lessee), hereinafter called the "Applicant Company," for permission to publish and file a Supplement to their Tariff C.R.C. No. 3511, naming rates on coal and coke from United States border points to stations in Canada, withdrawing and cancelling the said tariff, effective October 15, 1930, on fifteen days' notice, which will result in continuing in effect rates now published in the Applicant Company's Tariff C.R.C. No. 3281.*

WEDNESDAY, the 24th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon its appearing that the applicant company's Tariff C.R.C. No. 3511 was published in error to become effective October 15, 1930, and the Interstate Commerce Commission having granted the applicant company, under special permission No. 101273, dated September 19, 1930, authority to withdraw the tariff, effective October 15, 1930, thereby correcting the error and continuing in force the present rates; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant company be, and it is hereby, permitted to issue a supplement to Tariff C.R.C. No. 3511, withdrawing and cancelling the said tariff, effective October 15, 1930, on fifteen days' notice.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



ORDER No. 45469

*In the matter of the application of the Canadian National Railways and the Canadian Government Railways, hereinafter called the "Applicants," under Section 348 of the Railway Act, for approval of a standard form, being a release to be signed by persons who, for special reasons, desire to travel in cars which are not intended to carry passengers.*

File No. 1115.20

WEDNESDAY, the 24th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon reading what is filed in support of the application,—

*It is ordered:* That the following form of release of liability in respect of travelling on non-passenger cars, for use by the applicants, be, and it is hereby approved, namely:—

LICENCE

*Release of Liability in Respect of Travelling on Non-Passenger Cars*

Permission is hereby given to the undersigned (hereinafter called "The Licensee"), at his request, to travel on the.....car or train..... between.....and.....on the .....day of....., 19....

In consideration of the Canadian National Railway Company (or one of its subsidiary or allied companies) permitting me, at my request, to travel between the above points or for part of this distance on a car not intended to carry passengers, which I am not entitled by law to do, I do hereby release and discharge the said company of and from all claims and demands of whatsoever nature which I may now or anytime hereafter have or could maintain by reason, or on account of, any loss, damage, or injury to person or property, I may sustain or suffer in getting to or from or on or off any such car, or while travelling on any such car, or in any manner in connection with or as a consequence of the journey so made, whether any loss, damage, or injury be caused by negligence or otherwise.

Dated at.....this.....day of....., 19....

Agent to sign here as witness .....

Station..... Stamp..... Licensee Agent at..... (Insert name of station).

S. J. McLEAN,  
*Assistant Chief Commissioner.*

ORDER No. 45470

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freights Rates Act.*

File No. 34822.13

WEDNESDAY, the 24th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:*

1. That the toll published on wooden crates, less-than-carload, in Item 26 of Supplement No. 3 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic

Railway Company under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item No. 26 of Supplement No. 3 to Tariff C.R.C. No. 851, approved herein, is 68 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

ORDER No. 45471

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.13

WEDNESDAY, the 24th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 7 to Tariff C.R.C. No. 819, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 7 to Tariff C.R.C. No. 819, approved herein, are as follows:—

	Rates in cents per 100 pounds	
	C.L.	L.C.L.
Fish, fresh or frozen.. . . . .	27½	59
Fish, smoked.. . . . .	25	44

S. J. McLEAN,  
*Assistant Chief Commissioner.*

ORDER No. 45472

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 24th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 35 to Tariff C.R.C. No. 1237, and in Supplement No. 27 to Tariff C.R.C. No. 1240, filed by

the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are, hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 45495

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

SATURDAY, the 27th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:*

1. That the toll published in item 63 of Supplement No. 18 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, the Dominion Atlantic proportion to be reported at \$1.37 per puncheon.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 63 of Supplement No. 18 to Tariff C.R.C. No. 812, approved herein, is \$1.71 per puncheon.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 45504

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 30th day of September, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 19 to Tariff C.R.C. No. E-1230.

Supplement 21 to Tariff C.R.C. No. E-1243.

Supplement 20 to Tariff C.R.C. No. E-1302.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 45525

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Willowbrook Northwesterly Branch from the end of operated line at mileage 89·92 Tonkin Subdivision of the Canadian Northern Railway Company, to the end of track at Crowtherview, Saskatchewan, a distance of 22·45 miles.*

File No. 35921.2

THURSDAY, the 2nd day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Willowbrook Northwesterly Branch from the end of operated line at mileage 89-92 Tonkin Subdivision of the Canadian Northern Railway Company, to the end of track at Crowtherview, Saskatchewan, a distance of 22·45 miles.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## GENERAL ORDER No. 488

*In the matter of the application of the Canadian National Railways and the Canadian Government Railways, under Section 348 of the Railway Act, for approval of a standard form, being a release to be signed by persons who, for special reasons, desire to travel in cars which are not intended to carry passengers.*

File No. 1115.20

THURSDAY, the 2nd day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—  
*It is ordered:*

1. That Order No. 45469, dated September 24, 1930, made herein, be, and it is hereby, rescinded.

2. That the following form of release of liability in respect of travelling on non-passenger cars, for use by the railway companies, be, and it is hereby, approved and made applicable to all railway companies within the legislative authority of the Parliament of Canada and subject to the jurisdiction of the Board, namely:—

“ ..... Railway Company.

“ RELEASE OF LIABILITY IN RESPECT OF TRAVELLING IN NON-PASSENGER CARS

“ In consideration of the ..... Railway Company permitting me, at my request, to travel between ..... and ....., or for part of this distance, in a car not intended to carry passengers, which I am not entitled by law to do, I do hereby release and discharge the said company of and from all claims and demands of whatsoever nature which I may now or at any time hereafter have or could maintain by reason or on account of any loss, damage, or injury, to person or property which I may sustain or suffer in getting to or from, or on or off, any such car, or while travelling in any such car, or in any manner in connection with or as a consequence of the journey as made, whether any such loss, damage, or injury be caused by negligence or otherwise.

“ Dated at ..... this ..... day of ....., A.D. 19..

“ Witness:

“ ..... ”

S. J. McLEAN,  
Assistant Chief Commissioner.

ORDER No. 45527

*In the matter of the application of the Canadian National Railways, hereinafter called the “ Applicants,” under Section 276 of the Railway Act, for authority to carry traffic over their railway between Lake Verde and Pasquid Junction, in the Province of Prince Edward Island, a distance of 9·95 miles.*

File No. 37041.5

FRIDAY, the 3rd day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicants be, and they are hereby, authorized to carry traffic over their railway between Lake Verde and Pasquid Junction, in the province of Prince Edward Island, a distance of 9·95 miles.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45531

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 3rd day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 36 to Tariff C.R.C. No. E-1237, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45532

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.2

FRIDAY, the 3rd day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 13 to Tariff C.R.C. No. E-1236, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 45535

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Turtleford Southeasterly Branch Extension from Rabbit Lake at mileage 65·50, to the junction with the Blaine Lake Subdivision of the Canadian Northern Railway Company at Speers, in the Province of Saskatchewan, at mileage 95·35, a distance of 36·40 miles; also the east leg of the wye at the said junction, a distance of 0·22 of a mile, and one main line crossover located at the said junction, 0·04 of a mile in length, a total length of 36·66 miles.*

File No. 26653.23

SATURDAY, the 4th day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Turtleford Southeasterly Branch Extension from Rabbit Lake, at mileage 65·50, to the junction with the Blaine Lake Subdivision of the Canadian Northern Railway Company at Speers, in the province of Saskatchewan, at mileage 95·35, a distance of 36·40 miles; also the east leg of the wye at the said junction, a distance of 0·22 of a mile; and one main line cross-over located at the said junction, 0·04 of a mile in length—a total length of 36·66 miles.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45540

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

SATURDAY, the 4th day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 34 to Tariff C.R.C. No. E-1235, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45542

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 6th day of October, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.**The Board orders:*

1. That the tolls published in item 18 of Supplement No. 8 to Tariff C.R.C. No. 819, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 18 of Supplement No. 8 to Tariff C.R.C. No. 819, approved herein, is 21½ cents per hundred pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45544

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for leave to open for the carriage of traffic its Spruce Lake-Westerly Branch from the junction with the Turtleford Subdivision of the Canadian Northern Railway Company at mileage 71·87 to the end of track at Frenchman Butte, Saskatchewan; a distance of 29·29 miles; also the north leg of wye at the said junction, a distance of 0·24 miles; a total length of 29·53 miles.*

File No. 35572·4

MONDAY, the 6th day of October, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Spruce Lake-Westerly Branch from the junction with the Turtleford Subdivision of the Canadian Northern Railway Company at mileage 71·87 to the end of track at Frenchman Butte, Saskatchewan, a distance of 29·29 miles; also the north leg of wye at the said junction; a distance of 0·24 miles; a total length of 29·53 miles.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45550

*In the matter of the application of the Canadian National Railways for an Order suspending Supplement No. 17 to Canadian Pacific Railway Tariff C.R.C. No. W-2902, containing joint rates on coal, in carloads, from the Star Mining Company's mine at Rosedale and the J. D. Thomas Coal Company's mine at Drumheller to local stations on the Canadian National Railways west of Port Arthur and Fort William.*

File No. 27425·123

WEDNESDAY, the 8th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of the Canadian Pacific Railway Company, and the report of the Chief Traffic Officer of the Board,—

*It is Ordered:* That the said Supplement No. 17 to Canadian Pacific Railway Tariff C.R.C. No. W-2902, containing joint rates on coal, in carloads, from the Star Mining Company's mine at Rosedale and the J. D. Thomas Coal Company's mine at Drumheller to local stations on the Canadian National Railways west of Port Arthur and Fort William, be, and it is hereby, suspended as from September 5, 1930, pending hearing by the Board.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45553

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.12

WEDNESDAY, the 8th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the toll published from Saint John, New Brunswick, to Orillia, Ontario, in item No. 110-E of Supplement No. 10 to Tariff C.R.C. No. E-4316, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item No. 110-E of Supplement No. 10 to Tariff C.R.C. No. E-4316 is 32 cents per hundred pounds.

H. A. McKEOWN,  
*Chief Commissioner.*



ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH  
OF JULY, 1930

Railway accidents .....184, involving 48 persons killed and 219 injured.  
Railway accidents at highway crossings.... 27, involving 6 persons killed and 44 injured.

	Killed	Injured
Passengers .....	10	66
Employees .....	13	117
Others.....	31	80
	54	263

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF NOVA SCOTIA

Accidents

- 1 Automobile—Licence N.S. 11451.

PROVINCE OF NEW BRUNSWICK

- 2 Automobile—Carelessness of driver: licences N.B. 32718; N.B. 2274.  
2 Automobile—Licence N.B. 18832; one licence number not given.

PROVINCE OF QUEBEC

- 1 Automobile—Ran into side of train: licence Que. T-3925.  
5 Automobile—Failed to stop for crossing: Que. licences 118-195; T-5618; W-730;  
7444; K-382.  
1 Pedestrian—Passed around gates in lowered position.

PROVINCE OF ONTARIO

- 5 Automobile—Ran into side of train: Ontario licences FC-165; 50-852-C; KN-991;  
AZ-36; N.Y. licence 8-P-4181.  
3 Automobile—Carelessness of driver: Ontario licences JD-105; AR-453; Michigan  
773-313.  
1 Automobile—Defective brakes on auto: Ontario licence DA-88.  
1 Automobile—Licence Ont. FA-906.

PROVINCE OF MANITOBA

- 1 Automobile—Licence Man. 21401.

PROVINCE OF SASKATCHEWAN

- 1 Automobile—Ran into side of train: licence Sask. 6075.  
1 Automobile—Carelessness of driver: licence Sask. T-11-515.  
1 Automobile—Stalled on crossing: licence Sask. 24826.

PROVINCE OF ALBERTA

- 1 Automobile—Carelessness of driver: licence Alta. 60-665.

Of the twenty-seven accidents at highway crossing, five occurred at protected crossings and twenty-two at unprotected crossings. Twenty of the accidents occurred during daylight hours and seven during the night.

OTTAWA, October 4.

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The Board of  
**Railway Commissioners for Canada**

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**Judgments, Orders, Regulations, and Rulings**

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Vol. XX

Ottawa, November 1, 1930

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*Application of the United Farmers of Alberta for an Order of the Board directing that existing railway tariffs be revised to allow for two stop-offs for completion of loading of live stock shipments on through billing.*

File 8641.56.

JUDGMENT

BY THE BOARD:

The tariffs of the Canadian National and Canadian Pacific Railways in Western Canada contain a provision permitting live stock to be stopped off once in transit to complete loading, on the direct line of transit between point of shipment and original billed destination, subject to a charge of \$3 for the stop-off service.

Application is made for an order of the Board directing that the tariffs be revised to allow for two stop-offs for completion of loading at a charge of \$3 for each stop-off.

During the course of the General Freight Rates Investigation in 1926-7, there were certain submissions made to the Board concerning the rates on live stock in Western Canada, and included therewith, wider privileges for the completion of loads en route were requested, but this feature was not developed during the hearings in that case, and in its judgment the Board stated:—

“The submissions also ask for additional stop-off privileges, but this feature of the matter was not sufficiently developed in evidence and on the record, to enable it to be here dealt with intelligently.”

This matter was next brought to the attention of the Board by letter from the United Farmers of Alberta, dated January 31, 1928, enclosing copy of a resolution passed by the Convention of the United Farmers of Alberta, January 17-20, 1928, reading as follows:—

“Whereas, under the present existing railway tariff live stock shippers are allowed only one stop-off to load live stock shipments on through billings, and,

“Whereas shippers find it very expensive and impractical to ship live stock under the present tariff where they are only allowed one stop-off for completion;

“Therefore be it resolved that the convention recommend to the Board of Railway Commissioners that they ask the railway to revise the present tariff to allow for two stop-offs for the completion of live stock shipments on through billings instead of one. This service to be given on all way-freight trains.”

Copies of the foregoing resolutions were furnished to the railway companies who were asked for their submissions thereon. The position taken by the carriers was that the matter had not been developed any further by the resolution, which gives no reasons for the granting of the privilege asked for; that when the present stop-off arrangement was first established in 1913, it was claimed that as the live stock was spread over a large area there was some difficulty in accumulating a carload at one point, and for that reason the concession of consolidating a car at two points was granted, and since that time the co-operative system has been so developed that there is much less argument to-day for the privilege than when it was first established; that the nominal charge of \$3 for the stop-off service is not commensurate with the service performed by the railway; that the present arrangement has given rise to many cases of manipulation and substitution in the completion of loading which is not authorized by the tariffs, which unsatisfactory condition would be added to by the granting of another stop-off; that the present concession is a privilege, and while the Board has jurisdiction to prevent any unjust discrimination in connection with it no discrimination exists in the carrying out of the present tariff provision.

Copies of the replies of the carriers were sent to the United Farmers of Alberta on March 19, 1928. Although not set down for hearing, this application was mentioned by the Chief Commissioner at a sittings of the Board at Calgary on June 20, 1928. No further submissions were received from the applicants, but the matter was set down for hearing at sittings of the Board in Calgary on July 2, 1929, at which time Mr. J. J. Frawley appeared for the applicants and stated the matter had been the subject of negotiations between the applicants and the railway companies, and asked to have the matter adjourned until the next sittings of the Board in Calgary. On December 23, 1929, Mr. Frawley wrote the Board stating that their negotiations with the carriers had not resulted in any success so far as the application was concerned, and asked that the matter be listed for hearing. Thereafter the matter was heard at sittings of the Board at Calgary on March 18, 1930.

Mr. Chard, Freight Traffic Supervisor for the province of Alberta, appeared for the applicants and also the Alberta Live Stock Pool. He contended that the condition necessitating the privilege applied for is that, in many instances, there is not sufficient live stock available at the loading station and the first stop-off point to make up a full carload. He cited instances where the weight loaded at the two points was appreciably below the carload minimum weight applicable in connection with the carload rate, and in such cases the carload minimum weight is charged for although the actual weight may be less. It was further stated that this condition had been largely created by the development of a considerable movement of live stock during certain months of the year by motor truck direct from the farm to the packing plants. This trucking causes less live stock to be available for rail transportation. As a result it has been necessary to ship small lots of live stock by rail at local rates, or by truck to certain points, so as to enable a carload quantity to be made up at the originating station and the one stop-off point for completion of loading now permitted by the tariffs. The position of the applicants is pretty well summarized in a letter which they wrote to the railway companies dated August 2, 1929, reading as follows:—

“Our organization composed of thirty-eight local live stock shipping associations, with some seventeen thousand members, is organized for the purpose of marketing our members' live stock at cost, and in such a manner as to stabilize and raise live stock prices. To do this, it is necessary that we control a considerable volume of live stock and sell it on the open market, i.e., on the stockyards, where the live stock prices are made by competition among the buyers.



"We are having considerable difficulty at the present time in getting our live stock on the markets, owing to the great inroads that trucks are making in the business as the good roads improve. These trucks offer a good deal in the way of service in picking up the live stock on the farm. The truck drivers apparently receive secret commission from the packers, and invariably deliver direct to the plants. This is giving the packers a considerable volume and free them from being keen bidders on the yards, which in the result is detrimental to prices.

"In order to hold this business on the railroads, especially during the summer months when the volume of stock is small and the roads are good, the railways must in some way offset the service given by the trucks so as to compete. If your company would allow the second stop-off so that car lots can be secured, we believe that we can through organization in our local shipping associations check this inroad of trucks into live stock shipping, and hold the business through the railways to the stock yards.

"If you would give us a year's trial with the second stop-off, we believe that we can demonstrate to you that it will be to the advantage of your company, and at the end of the year, if conditions are such as not to justify the continuance of the second stop-off, we would agree that this trial period shall not prejudice your right to discontinue that service.

"Trusting that your company will be prepared to meet this truck competition in the manner suggested and assuring you of our assistance in all ways practicable to make a second stop-off work out economically, I am, etc."

In the handling of this live stock by the railways under the completion of loading in transit privilege, the completion of loading is done while the train is at the station and the car is carried forward on the same train. Mr. Chard stated that the time consumed in completing the loading of a car varied from thirty to sixty minutes.

The representatives of the carriers opposed the application, amplifying their position as already briefly summarized herein, also alleging that it has been determined through consultation with operating officers that the granting of this request would demoralize the live stock train schedules which the railways are making every effort to maintain in the general interest of the live stock trade.

One argument put forward by applicants was the motor truck competition, which, it is contended, the railway companies should meet by the granting of this application. Motor truck competition exists throughout Canada and with respect to a great many commodities, but the establishment of abnormally low rates or other regulations to meet such competition is a matter which lies within the discretion of the carriers. The Board has repeatedly stated that, subject to the provisions of the Railway Act regarding discrimination, it is within the discretion of the railway companies to meet competition, but they are not compelled to put in or to maintain rates to meet such competition; that they have a right to establish competitive rates, but the Board does not direct their establishment as a matter of compulsion.

Reference was made to the regulations in Eastern Canada where there are stop-off arrangements for completion of loading on canned goods, grain, live poultry and live stock, and in the case of canned goods, live stock and live poultry, the arrangement is not restricted to one stop-off for completion of loading. In Western Canada, up to three stop-offs are permitted on live poultry for completion of loading of car. Applicants submitted there should not be any discrimination shown as between Eastern and Western Canada. These arrangements have been established by the railway companies to meet the special circumstances existing with respect to the traffic in question, but a

complete explanation concerning them is not a matter of record with the Board. The existence of an arrangement in Eastern Canada, established under the particular conditions there existing, and the absence of a similar arrangement in Western Canada, is not necessarily unjust discrimination of the character forbidden by the Railway Act. There are many differences, in not only certain regulations or arrangements, but also in the rates themselves, as between Eastern and Western Canada, but which do not constitute a discrimination which is unjust. The interpretation of the Railway Act in this respect, and the position taken by the Board on the issue of unjust discrimination has been set out in a great many decisions of the Board, citations from some of which follow, and which position has been uniformly followed in all cases coming before the Board.

The late Chief Commissioner, Hon. Mr. Mabee, in *Toronto and Brampton vs. Grand Trunk Railway and Canadian Pacific Railway Companies*, 11 C.R.C., 370, stated:—

“The Railway Act, as I understand it, authorizes and justifies discrimination. It is only an undue, unfair or unjust discrimination that the law is aimed against.”

In 18 C.R.C., 424, *Cuneo Fruit and Importing Company vs. Grand Trunk Railway*, it is stated:—

“Discrimination may or may not fall within the provisions of the Act. The Act, as it has always been interpreted by the Board, only forbids discrimination when it is undue or unreasonable. In *re Western Tolls*, 17 C.R.C., 123, pages 148 to 156.”

In Volume 17, Board's Judgments and Orders, p. 561, *Application of the Dominion Sugar Company, Limited, Chatham, Ontario*, at p. 564, the Board said:—

“Even with regard to rates on the same line of railway, a difference in rates on different parts of the line does not necessarily constitute unjust discrimination, and to carry the illustration further, there may be, without unjust discrimination, over the same portion of the same line, a difference in rates where the movements are in the opposite direction.

“As the result of various freight rate investigations by the Board, particularly the Western Rates Case in 1914; *re Freight Tolls*, 1922; and the General Freight Rates Investigation, in respect to which judgment issued in September, 1927, it is a matter of general knowledge that there are differences in the rates on the same traffic for similar distances in different parts of the country, and that this does not constitute unjust discrimination of the character forbidden by the Railway Act.”

In Volume 18, Board's Judgments and Orders, p. 331, in the matter of complaints of various parties *re* proposed cancellation of import rates on tea from Vancouver to points in Western Canada, at p. 337, it is stated:—

“The Board has had before it in many cases questions of discrimination and has pointed out in its decisions that mere difference of treatment as between different sections does not in and of itself establish the existence of discrimination which falls within the inhibitions of the Railway Act. Differences in rates may arise from different conditions. A particular example of this was indicated in one of the Board's recent decisions—that dealing with the General Rate Investigation, Board's Judgments and Orders, Vol. XVII, p. 131. The Chief Commissioner, in dealing with, *inter alia*, the question of different standard mileages East and West, pointed out, at p. 135, that no reasons had been urged sufficient to make it advisable that these differences should be eliminated or altered. It was set out that ‘their origin and the reasons for their



establishment and maintenance have been frequently explained; and, in my view, such reasons stand as a justification for the continuance of these existing features of our rate system substantially unimpaired.' That is to say, so far as the different standards enter into or affect rates based thereon they are justification for different rates in different sections for identical mileages."

In Volume 13, Board's Judgments and Orders, page 233, the application of the Calgary Livestock Exchange *et al*, for an order directing the railway companies to establish reduced minimum carload weights on sheep is dealt with. Amongst other things, comparison was made with minimum weights in Eastern Canada which were lower than in Western Canada. The application was dismissed, and in its judgment the Board stated:—

"The Board has recognized that differing conditions, competitive conditions, etc., have brought about differing rates and rules in different sections.

In speaking of rate adjustments in the West, it has been said that particular facts of the section in which the rate adjustment is made must be considered, and it does not follow that the arrangement operative in the West would be a criterion of discrimination in connection with a complaint as to a different rate adjustment east of the Lakes. *Re Freight Tolls*, 27 Can. Ry. Cases, 153, at p. 174. Manifestly, the same principle applies when the comparison is concerned with a rate or practice existing in Eastern Canada."

"On consideration of the record and bearing in mind the low rate basis which is borne by the commodity under consideration as compared with other rates in existence, and also considering the rate and minimum, I am of the opinion that it has not been established that the difference in minimum applicable in the case of local shipments in the West as compared with local shipments in the East creates an unjust discrimination against the shipments in the West, or undue preference in favour of local shipments in the East."

In Volume 12, Board's Judgments and Orders, p. 268, Complaint of the Spanish River Pulp and Paper Mills, Limited, at p. 278 and 279, it is stated:—

"In dealing with the question of discrimination, the matter of detriment, if any, to which the applicant is subjected by the alleged unjust discrimination or undue preference must be considered. Difference in rates is discrimination; but the prohibitions of the Railway Act in regard to discrimination are prohibitions of *unjust discrimination* or *undue preference*, and the question is whether the discrimination amounts to an unjust discrimination or undue preference. In *re. Western Tolls*, 17 Can. Ry. Cases, 123, at pp. 148 to 156."

"One criterion of unjust discrimination is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place.

"*Wegenast v. G.T.R. Co.*, 8 Can. Ry. Cases, 42, at p. 45. *Toronto and Brampton v. G.T.R. and C.P.R. Cos.*, 11, Can. Ry. Cases, 370, at p. 375. *Massiah v. C.P.R. Co.*, Board's Orders and Judgments, Vol. 4, p. 106."

"In *Ontario Paper Co. v. G.T.R. Co.*, 24 Can. Ry. Cases, 177, no evidence was submitted that any rate advantage possessed by any competitor had rendered it more difficult for the applicant company to do business, and the allegation of unjust discrimination was held to be unfounded"



"Evidence is required as to how rates complained of re-act to the detriment of the applicant.

"Zwicker & Co., v. Can. Nat. Rys., Board's Orders and Judgments, Vol. 12, No. 16, at pp. 152, 153."

"The ultimate test of discrimination is to be found not in difference of rates but in the question whether as a result of this difference an injury is worked to an individual or locality. One test of this is whether the locality alleged to be favoured actually gets into a common market on a lower rate. The rate paid rather than the distance travelled is important."

"In *re* Telegraph Tolls, 20 Can. Ry. Cases, 1, p. 23."

In Volume 13, Board's Judgments and Orders, p. 161, Complaint of Messrs. Plunkett and Savage, Calgary, and Scott National, Limited, Medicine Hat, Alta., at p. 164 it is stated:—

"One criterion of unjust discrimination is whether the district or individual alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place. Where no evidence was submitted that any rate advantage possessed by a competitor had rendered it more difficult for the applicant company to do business, the allegation of unjust discrimination was held to be unfounded. Ontario Paper Co. vs. G.T.R. Co., 24 Can. Ry. Cases, 177."

With the exception of livestock, there is obviously no competition as between the commodities above named which are accorded stopp-off arrangements, and with respects to the live stock, there is no evidence whatever that the arrangement in Eastern Canada is in any way detrimental to the western industry, thus creating discrimination of a character which is unjust.

The stop-off arrangement on live stock in Eastern Canada was established a great many years ago by the railway companies. It is not an arrangement that was directed by the Board, and as a matter of fact, none of the stop-off arrangements referred to, either in Eastern Canada or Western Canada, are a result of any order or direction of the Board. The representatives of the carriers stated that, in practice, more than one stop-off in Eastern Canada is only made use of in isolated cases.

On the question of the effect on the train service which would result from the granting of the application, and how it would work to the detriment of the shippers, Mr. McSparran, Supervisor of Train Service of the Canadian National Railways, made a statement concerning this which is to be found on pages 1464 to 1468 of the record, which is quoted below:—

"Mr. McSPARRAN: After giving this matter our most careful consideration, we are obliged to make a strong objection to this application, on the ground of the adverse effect it will have upon our service, it being assumed that the intention is that stock would be set out and picked up by the same train, as described by Mr. Chard.

"On all our lines in stock raising territory we have assigned one day per week on which we undertake to give stock prompt through movement irrespective of the number of cars. This stock is picked up by trains known as mixed trains, or way freight trains, and on certain lines by time freight trains. These services are so arranged as to provide connections at junction points and terminals, and in a great many cases the trains have to pass up work ordinarily performed, in order to make connections.

"On branch lines which are served only by mixed trains, that is, trains which handle both passengers and freight, it is essential to keep

these trains on time as far as possible, as frequently connections have to be made for passengers. If these trains were held up at intermediate stations to permit of completion of loading of stock, the result would undoubtedly be interference with train times and schedules, and often failure to make connections.

"Now, in the case of way freights, as already pointed out, other work is frequently passed up on the regular stock loading day, and on many of our lines the stock has to be delivered at the terminal at the end of the local run, in time to be picked up by time freight, which gives the stock expeditious movement for the balance of the trip. The margin of time is generally very short, and if the train picking up stock had to wait for cars to complete loading, the connection with the time freight would often be missed, entailing considerable delay to other stock which might be picked up on the same run.

One of our daily time freights which picks up considerable stock at intermediate terminals also handles stock destined to Eastern Canada. The train has to reach Winnipeg in time to permit of stock being given daylight inspection by the Government inspector so as to permit of it being forwarded east the same night. If the train is late the stock cannot be inspected on day of arrival, and this means a delay of twenty-four hours at Winnipeg, which is a very important fact as far as the shippers and consignees are concerned. It is therefore essential that this train be kept on time, except when delayed through some unavoidable cause, and we could not undertake to have it delayed at any point for stock connection.

"Mr. Chard made the statement that where stock would complete loading at another point the work would be taken care of during time the train crew could be doing other work.

"MR. CHARD: I said it might be possible.

"MR. McSPARRAN: It would be only in an isolated case where that could be done. Where stock has to complete loading the work is done after all the work to be done on a train has been completed, therefore that would represent additional delay to the train.

"Our experience is that all this work of loading has not been taken care of in thirty minutes; we have gone from thirty-five to forty minutes, and even up to an hour and a half. Sometimes the buyers have not completed arrangements for their stock at the pick-up points when we got there, and they have to negotiate with farmers for the stock required to fill a car, which all takes time.

"I think an average delay of about one hour would be about how it would work out.

"In regard to the question brought up of the time taken to pick up stock farther along on the run, I may say that on most of our way freight runs the work generally takes the crews around twelve or thirteen hours. Our agreement with the men provides that they have the privilege of tying up for rest after having been twelve hours on duty. They will tie up when they are only eight or nine miles from the territory where they have to do other kinds of work. It was felt by the management that after the men unloaded the way freight and had been at work twelve hours they had done a fair day's work. If you have one or two additional stops, it might run into two additional hours for the trip, so you can see where that is going to lead to, as far as way freight runs are concerned.

"As a matter of fact, speaking of these way freight schedules, the reason we took them out of the time tables, or are taking them out, is because it is a difficult matter to set up a schedule for way freight trains



which will apply in all cases, on account of the variation in the work to be done. Some days it is light at one station and heavy at another, and sometimes heavy at one station and light at another.

"I previously mentioned that we had assigned one day per week as the regular stock loading day, and our present live stock service represents the result of years of experience and careful consideration, and I have no hesitation in saying that it works out very satisfactorily from the standpoint of the live stock industry. We are giving this service at a considerable loss, on some of our branch lines, but we are anxious to do everything within reason to foster the live stock business, and we would dislike to see any condition imposed which would interfere with the efficient operation of this service.

"I believe that this gives a fair outline of how our service would be affected if the suggested stop-offs were put into effect.

"When the one stop-off privilege was granted, it was not intended that continuous movement would be arranged, but in most cases we have been doing this at considerable inconvenience and expense, as otherwise stock would be delayed up to 48 hours, especially on branch lines, where there is only tri-weekly service.

"If the additional stop-off was authorized we would simply be obliged to set cars out, as we could not afford to have our service demoralized, and this would cause a delay to such stock, to such an extent that it would be a detriment instead of a benefit to the live stock shipper.

"I might add that in holding trains for completion of loading of cars on the one stop-off arrangement we are considerably out of pocket, as the charge of \$3 does not nearly reimburse us for the expense incurred.

"As I have already stated, we could not undertake to provide the service we are giving now if any additional stop-offs were authorized, we would have to set the cars out and let them lie at the station until a train came along on a subsequent day. That is one point I would like to particularly stress."

When asked how the matter was handled in Ontario where more than one stop-off is permitted, Mr. McSparran stated that in Ontario there is a much more frequent train service and the car is set out for completion of load and picked up on the following train. He stated this could not often be done in Western Canada without serious delay to the live stock.

The evidence shows clearly that the privilege applied for could not be granted without creating a serious disturbance in the railway service which has been arranged to give live stock a prompt through movement with connections at junction points and terminals, and, consequently without serious inconvenience and injury to the live stock industry at large, and to the shippers of carload lots in particular. It would be unadvisable to delay fast freight trains carrying carload shipments only to allow a few shippers to complete their loadings.

Railway companies, not as a result of an order of the Board, but voluntarily, have provided certain stop-off privileges on a limited number of commodities. Such arrangements have always been considered as concessions established to meet special circumstances, in connection with certain movements of traffic, in certain well defined territories.

Once it has determined, approved or allowed what it considers to be just and reasonable carload or less-than-carload rates, this Board should not interfere with the managerial discretion of the railway companies, unless unjust discrimination be alleged and proven, which is not the case herein.

This application should therefore be dismissed.

OTTAWA, September 27, 1930.



## ORDER No. 45594

*In the matter of the application of the United Farmers of Alberta for an Order directing that existing railway tariffs be revised to allow for two stop-offs for completion of loading of live stock shipments on through billing.*  
File No. 8641.56

THURSDAY, the 9th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, March 18, 1930, in the presence of counsel for and representatives of the province of Alberta, the Canadian Pacific and the Canadian National Railway Companies, and the P. Burns Company, and what was alleged; and upon the report of the Chief Traffic Officer of the Board,—

*It is Ordered:* That the application be, and it is hereby, refused.

H. A. McKEOWN,  
*Chief Commissioner.*

*Application of Eastern Canada Fruit and Vegetable Jobbers Association, Toronto, for a ruling of the Board as to the rate properly applicable on a carload shipment of tomatoes from Sitka, Tennessee, July 10, 1926, to Ottawa, Ontario, the delivering Canadian carrier being the Canadian National Railways.*

File No. 26602.82

## JUDGMENT

BY THE BOARD:

The applicant refers to the rate charged on the above described shipment as being \$1.38 per 100 pounds, and claims the Montreal rate basis of \$1.19 per 100 pounds, which also applies to Lachute, Ottawa being directly intermediate to Lachute. The expense bills submitted by applicant indicate the rate charged was \$1.29 per 100 pounds. Illinois Central Railway Company Tariff C.R.C. 818, in effect at the time this shipment moved, published a through rate from Sitka to Montreal on tomatoes, carloads, of \$1.11 per 100 pounds (not \$1.19 as referred to by applicant). By authority and application of the Guide Book, as specified by note 8 on page 16 of the tariff, the Montreal rate is made applicable to Lachute. The rate to Ottawa was not specifically provided for in said tariff at the time the shipment moved, although subsequently, effective October 25, 1926, in Supplement 2 to the tariff, Ottawa was specifically added as a destination point at the same rates as applying to Montreal.

In connection with the rates to Montreal, the tariff provided (p. 53) that they were: "subject to rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A at intermediate points of origin and destination (see note 2 on title page)." Note 2 on title page of tariff referred to in the provision just quoted read:—

"By authority of rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, the commodity rates made subject to this rule are not made applicable from (or to) all intermediate points. Commodity rates not exceeding those from (or to) the next more distant point from (or to) which a commodity rate, subject to rule 77, is named, either in this or other tariffs lawfully on file with the commission will be estab-

lished under this rule, upon one day's notice to the commission and to the public from (or to) intermediate points as follows:—

“(1) Within thirty days after receipt of request, written or verbal, for the establishment of such rate, or rates, accompanied by advice of early prospective shipment from (or to) any such intermediate point.

“(2) Within thirty days after a responsible traffic official of the carrier (or the publishing agent) obtains knowledge that a shipment has moved or probably soon will move from (or to) any such intermediate point.

“This rule does not authorize the maintenance of commodity rates from (or to) intermediate points under a rate higher than the rates applicable from (or to) more distant points; neither does it authorize reductions in existing commodity rates or any increases in rates from (or to) intermediate points on less than statutory notice.

“Where rule 77 is applicable, and it develops that shipments have moved from (or to) an intermediate point under a rate higher than that contemporaneously applicable to the more distant point, carriers will file an application with the Interstate Commerce Commission on the special docket for authority to make refund on all such shipments to the basis of the rate from (or to) the more distant point.”

On page 20 of the tariff, note 25, under the caption “Long and Short Haul Clause applicable to points in Canada,” the following provision was published:—

“The rates named in tariff to points in Canada unless specifically indicated are maximum rates and must not be exceeded in the same direction from or to any intermediate point in the direct line of transit.”

In the Guide Book, providing for rates to Lachute on the Montreal rate basis, there was a provision reading:—

“The rate to a directly intermediate point in Canada to which a basis is not named herein, will be the same as the basis herein published to the next more distant station in Canada, except that where the rate to the more distant point is issued to meet competition as indicated herein, such rate will not apply to intermediate points in Canada.”

The Montreal and Lachute rates were not specified as being competitive rates and, therefore, not exempted from the long and short haul or intermediate application of rates.

In the submission of the Canadian National Railways it is stated:—

“In the first place, there is no long and short haul clause embodied in Illinois Central Railway Tariff I.C.C. 7063 under which this particular shipment was handled.”

This statement ignores the fact that rule 77 was prescribed by the Interstate Commerce Commission and published in the tariffs for the sole purpose of bringing the rate structure into substantial compliance with the fourth section requirements of the Interstate Commerce Act, the fourth section being the long and short haul provision; it further ignores the specific provisions of note 25, page 20 of the tariff, above quoted. There is also a contradiction in this quotation as the railway refers to Illinois Central Railway Tariff I.C.C. 7063 (C.R.C. No. 818) “under which this particular shipment was handled,” while, in fact, it is the contention of the railway that this tariff was not applicable and the shipment was not handled thereunder. The railway company further states:—

“The tariff is subject to rule 77, which specifically prohibits rates published to specific points being applied to intermediate stations except through the process provided; that is, on one day's notice after application has been received from the shipper or consignee.”



The foregoing statement overlooks the provisions of the last paragraph of note on the title page of the tariff, already above quoted.

The railway company further states that in any event Ottawa is not intermediate to Lachute in so far as their service is concerned, for the reason that the general movement of traffic from the west to Lachute is via Montreal rather than via Ottawa. The shortest, or most direct, route of traffic from the west to Lachute is via Ottawa, the distance via Montreal to Lachute being considerably greater. The application of rule 77 would not be dependent in this case upon whether the traffic to Lachute was handled via Montreal or via Ottawa. Note 25, page 20, provides that the rates are maximum rates not to be exceeded to any intermediate point in the direct line of transit.

Under the wording of the tariff rules above quoted, Ottawa being directly intermediate to Lachute via the shortest distance, the Board declares that the Lachute rate is applicable to Ottawa in this instance under the terms of the tariff. In other cases before the Board, the Canadian National Railways have submitted that the direct line can mean nothing more or less than the shortest available route between two given points. See also what is stated in judgment of the Board in Volume 17, Board's Judgments and Orders, page 679, concerning the direct routing provision published in tariffs of the Canadian National Railways.

OTTAWA, October 6, 1930.

*Application of the United Farmers of Canada, Saskatchewan Section, Limited, that the rate structure be so amended as to provide that shipments may be made from the point of loading to the point of the ultimate destination with stop-over privileges at a reasonable charge.*

(File 8641.60.)

#### JUDGMENT

BY THE BOARD:

By letter dated November 12, 1929, the Saskatchewan Section of the United Farmers of Canada made application for an amendment to the rate structure which would permit carload shipments to be made from the point of loading to the point of ultimate destination with the privilege of stop-off for partial unloading enroute at the carload rate, with a reasonable charge for the stop-off privilege for unloading. While lumber and twine were cited as examples, the application was that all freight moving in carloads be granted the privilege of distribution at two or more points at the carload rate. It was set out that carload shipments of cattle may be stopped off at two or more shipping points for completion of loading with the stop-off charge, and in view of this, applicants stated:—

“We would suggest that the same arrangement be made with regard to the unloading of freight, with, of course, a reasonable provision for stop-over charges and limitation of stop-over.”

It should be observed that in Western Canada there is not more than one stop-off for completion of loading provided for cattle.

The application was served upon the interested railway companies, who pointed out that it involved the distribution of less than carload traffic at carload rates and they could not entertain such a proposal as it would be impossible to determine where such a privilege should stop short of universal practice. They stated that, having regard to the peculiar nature of the livestock industry, they had granted the privilege of one stop-off in transit for completing loads at the through carload rate, from the original shipping point of the car to the ultimate destination, plus stop-off charge; that the conditions surrounding the handling of livestock are not the same as those existing with



regard to any other traffic; that there is no unjust discrimination in allowing a stop-off on livestock for completing of loading and refusing to allow a stop-off on other commodities for distribution in less than carload quantities.

The replies of the railway companies were forwarded to the applicants, who, by letter dated January 24, 1930, stated that if they carried on their application any further, their intention would be that it be limited to such articles as can be readily split into less than carload lots for unloading purposes within the car itself, and where the unloading could take place while the train was at the station and without the necessity of leaving the car off to be picked up by another train, it being pointed out that the completion of loading of livestock is done by such loading taking place while the train is at the station and the car is carried forward by the same train.

Thereafter, this matter was set down for hearing and heard at sittings of the Board held in Regina on March 14, 1930. The applicants were represented by their president, Mr. G. H. Williams, who stated there was associated with them the Co-Operative Wholesale Society of Saskatchewan. The application was further modified at this time, and is limited on what is now before the Board to two commodities, namely, twine and flour, and to one unloading in transit to be done while the train is at the station, permitting the car to go forward to final destination on the same train. The application is that: "In billing the car, each point should be charged with their portion of the shipment at carload lot rates from the point of origin to the point to which either portion of the freight is carried."

This application has somewhat unusual features. Ordinarily, the grounds of an application or complaint are that the existing rates are, in themselves, unreasonable, or that they result in an unjust discrimination against the applicants or an undue preference in favour of others. No such allegations are advanced herein. There is no attack upon the reasonableness of the existing rates, which were under review by the Board in the General Freight Rates Investigation in 1927. No unjust discrimination is alleged. The basis of the application is the desire of applicants to lower the costs of distribution. It may be taken for granted that this is a universal desire.

The applicants also allege that at present there is considerable distribution of small lots of freight by motor trucks, and, in their opinion, it would be in the interest of the railways to provide some method by which less than carload shipments may be retained to the railroads as freight traffic. Motor truck competition exists throughout Canada. The question of establishing abnormally low rates to meet such competition, however, is a matter which should be left to the discretion of the carriers. The Board is on record, in a great many cases, and has repeatedly stated that subject to the provisions of the Railway Act regarding discrimination, it is within the discretion of the railway companies to meet competition or not, and to establish competitive rates, but that the Board's policy is not to direct their establishment as a matter of compulsion.

The applicants made reference to the privilege here asked for being the same as applies in connection with the completion of loading of live stock in transit. Aside, however, from the special conditions governing the arrangement with regard to live stock, which was not established by any direction of this Board, there is an important difference. In the case of live stock, the carload pays the carload minimum weight and rate through from the original point of origin to final destination plus stop-off charge, while the application here is that: "Each point should be charged with their portion of the shipment at carload lot rates from the point of origin to the point at which either portion of the freight is carried." In other words, in the one case, there is one through rate and minimum weight, namely, that applying from original point of

origin to final destination; in the other, there may be two different carload rates applying on two less than carload lots unloaded at two different stations.

Bearing on the lower cost of distribution under the privilege applied for, the applicants, at pages 1257-8 of the record, submitted figures covering three illustrations with respect to shipments of twine, namely:—

- (1) A shipment from Port Arthur billed to Edenwold via Melville with an unloading privilege at Melville.
- (2) A shipment from Fort William to Young with unloading privilege at Watrous.
- (3) A shipment from Fort William to Dafoe with unloading privilege at Wingard.

These examples are based on 14,000 pounds being unloaded at the stop-off point enroute and 10,000 pounds forwarded on to final destination, and the figures submitted showed a saving of \$37 in freight charges on shipment (1) and \$15 on shipments (2) and (3) where a quantity of 10,000 pounds is forwarded to the final destination point. In the case of example (1), there is an error in the figures given by applicants. The carload rate from Port Arthur to Melville is 90 cents, not 93 cents as stated, and the less than carload rate from Melville to Edenwold is 39 cents, not 45 cents as stated, with the result that the saving under the illustration given would be \$28 instead of \$37. These figures are based on a quantity of 10,000 pounds, which is considerably in excess of the average quantity used by an individual consumer. In other words, it is the saving that would be effected by a number of consumers rather than by the individual consumer. Under the present tariff provisions, where less than carload lots are shipped from some nearby distributing point, they are subject, where handled by the railway, to the less than carload rates from such distributing point to the final destination. Calculating at 2½ pounds per acre, a 300-acre farm would require 750 pounds of twine. If handled by the railway as a less than carload shipment for a distance of 50 miles from a distributing point, the freight charge from such distributing point on the weight named would be \$2.03 if shipped from a town tariff distributing point, or \$2.25 if shipped from a point not provided with town tariff distributing rates. If the distance hauled is less than 50 miles, the charge is lower. It is stated that considerable distribution is made by motor truck at a lower cost than the charges of the railway companies, which would reduce the figures given. The difference between the figures just given and the difference, where any, between the carload rates from the head of the lakes to the respective destinations, do not indicate a very great difference or excessive distribution cost per individual consumer, although, in the aggregate, on the total volume of twine shipped, the difference would certainly be considerable, and would involve a very substantial reduction in the carriers' revenue.

The Retail Merchants' Association of Saskatchewan are on record as being opposed to the application, stating that in their opinion, what is applied for is not in the best interest of the province. There was also represented at the hearing, the Western Canada Fuel Association and the Western Canada Retail Lumber Association, who are opposed to the application as originally presented if applicable on commodities in which they are interested.

The railways submitted that they do not consider the Board has any power under the Railway Act, section 312, subsection (E), to direct the privilege here applied for, and cited in support of this contention the judgments of the Board in the following cases, and in which the question of the Board's jurisdiction is dealt with and what is therein stated seems applicable in this case.

Volume 11, Board's Judgments and Orders, page 300, Application of the Department of Railways and Telephones for the Province of Alberta, for the privilege of stopping in transit, carloads of telephone poles for treatment.



Volume 17, Board's Judgments and Orders, Page 27, Application of the Ross Leaf Tobacco Company, Limited, of Kingsville, Ont., for a transit rate on partly processed raw leaf tobacco from St. Thomas to Kingsville, with stop-off privileges at Kingsville, for shipments enroute to the seaboard or final destination in the Dominion of Canada.

Apart from the question of jurisdiction, the representatives of the carriers contended that the proposed stop-off charge of \$3 would be entirely inadequate as proper remuneration for the service given; that it would not be practicable in all cases to do the unloading and forward the car in the same train without seriously delaying and holding up the train, or setting the car off to be picked up by another following train; that if a privilege of this character was established on twine and flour, it would be followed by applications for the same arrangements on other commodities, which could not be granted without serious delays to car equipment, with consequent car shortage. It would not, in all cases, be possible to perform the unloading while the train is at the station without delaying it, and also, the car might not arrive on the day expected through missing its connection, breakdown, or some other reason. It is easy to imagine the chaotic operating conditions thereby created.

If the Board directed the establishment of the privilege here applied for, it would be, on the record that is before it, solely on the grounds advanced by applicants, namely; the desire to lower costs of distribution. How, therefore, without discrimination, could the same privilege be denied with respect to similar applications for its extension to other commodities which would, undoubtedly, follow.

This application is made only by the Saskatchewan Section of the United Farmers of Canada. There has never been an application for such an arrangement in any other province, but to avoid discrimination, the arrangement would have to be also extended to all other western Canadian provinces. Partial unloading of carload freight in transit is not permitted on any commodity in any part of Canada, although a number of applications for similar privileges have been made to the railway companies, and some to this Board, for instance the application of the Alberta Wholesale Implement Association, Calgary, that arrangements be made by the railway companies to permit a stop-over privilege for unloading, on through cars of farm machinery shipped to small towns, dealt with in Volume 17, Board's Judgments and Orders, page 411.

The fundamental question involved, however, is the propriety of establishing the privilege applied for whereby the carload rate will be accorded on less than carload shipments. Section 314, subsection (3) of the Railway Act stipulates that the tolls for carload quantities may be proportionately less than the tolls for less than carload quantities if such tolls are, under substantially similar circumstances, charged equally to all persons. Briefly, the principle of carload rates lower than rates applicable on the same goods shipped in less than carload quantities has always existed. The definition of a carload rating is contained in the Canadian Freight Classification approved by the Board, namely:—

“Carload ratings apply only when a carload of freight is shipped from one station, in or on one car in one day, by one shipper for delivery to one consignee at one destination. Only one bill of lading from one loading point and one freight bill shall be issued for such carload shipment. The minimum carload weight provided is the lowest weight on which the carload rating will be computed.”

A consignee who cannot take the quantity of freight requisite to obtain the carload rating cannot expect to receive less than carload quantities at carload rates. The privilege applied for, if granted, would break down one of the most



important principles of rate making. It certainly could not, without unjust discrimination, be given the limited application sought herein.

The application therefore fails.

OTTAWA, October 15, 1930.

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GENERAL ORDER No. 489

*In the matter of the application of Building Products, Limited, of Montreal, Province of Quebec, for permission to supply Solid Fibreboard boxes for shipping freight over railways in Canada under Shipping Container Specifications numbers 23A, 23B, 23C, 23D, and 23E, of Interstate Commerce Commission Regulations for the transportation by rail of explosives and other dangerous articles by freight.*

File No. 1717.38.2

TUESDAY, the 14th day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon its appearing that a revision of the rules of the transportation by freight of explosives and other dangerous articles over railways in Canada is now in progress, and the railways having stated that they have no objection to the immediate use of the said containers, pending the publication and approval by the Board of such rules,—

*It is ordered:* That, effective October 1, 1930, solid fibreboard boxes, complying with the Container Specifications 23A, 23B, 23C, 23D, and 23E, published in Agent B. W. Dunn's Tariff No. 2, on file with the Board under C.R.C. No. 2, may be used for shipping classes of freight permitted by the said tariff to be shipped in such containers over railways in Canada subject to the Board's jurisdiction.

2. That General Order No. 487, dated September 22, 1930, made herein, be rescinded.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 45588

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.13

TUESDAY, the 14th day of October, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:*

1. That the toll published in item 87 of Supplement No. 42 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 87 of Supplement No. 42 to Tariff C.R.C. No. 813, approved herein, is 30½ cents per hundred pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45589

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 14th day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 35 to Tariff C.R.C. No. E-1235.

Supplement 37 to Tariff C.R.C. No. E-1237.

Supplement 29 to Tariff C.R.C. No. E-1240.

Supplement 26 to Tariff C.R.C. No. E-1246.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 45590

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, and Order No. 43632, dated October 17, 1929:*

File No. 34822.15

TUESDAY, the 14th day of October, A.D. 1930.

S. J. McLEAN, *Asst. Chief Commissioner.*C. LAWRENCE, *Commissioner.*

Upon its appearing that the normal rate of \$1.15 established by the said order was in error,—

*It is ordered:* That the figures 1.15 appearing in the last line of section 2 of Order No. 43632, dated October 17, 1929, be struck out and that there be substituted therefor the figures 1.10.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 45613

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.2

MONDAY, the 20th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement 12 to Tariff C.R.C. No. E-1238, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,

*Chief Commissioner.*

## ORDER No. 45614

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.12

MONDAY, the 20th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.**The Board orders:*

1. That the tolls published in item 242 of Supplement No. 32 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9f of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 242 of Supplement No. 32 to Tariff C.R.C. No. E-4312, approved hereby, are as follows:—

<i>To</i>	<i>Rates in cents per hundred pounds</i>
Montreal, P. Q. }	34½
St. Johns, P.Q. }	37½
Toronto, Ontario	

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45615

*In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.13

MONDAY, the 20th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.**The Board orders:*

1. That the toll published in item 86 of Supplement No. 19 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act; the Dominion Atlantic Railway proportion to be reported at 11 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 86 of Supplement No. 19 to Tariff C.R.C. No. 812, approved herein, is 12 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45624

*In the matter of the applications of the Detroit & Canada Tunnel Company and the Detroit and Windsor Subway Company, under Section 323 of the Railway Act, for approval of by-laws dated October 17, 1930, authorizing T. P. Pinckard, General Manager, to prepare and issue tariffs of the tolls to be charged in respect of the vehicular tunnel owned or operated by the Companies, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid, the said by-laws being on file with the Board under file No. 35943.4.*

WEDNESDAY, the 22nd day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report of the Assistant Chief Traffic Officer of the Board,—

*It is Ordered:* That the said by-laws be, and they are hereby, approved.

H. A. McKEOWN,

*Chief Commissioner.*

The Board of  
Railway Commissioners for Canada



Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, November 8, 1930

No. 18

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*Application of the Halifax, N.S., Harbour Commission for an Order directing that the present rate from Fort William, Port Arthur and Armstrong to Halifax of 21.30 cents per bushel on wheat and 20.40 cents per bushel on other grain be disallowed, and that there be substituted therefor a tariff showing a rate of 11.6 cents per bushel on all grain and that the present differential of .6 cents from Montreal and Quebec on grain and flour to Halifax be continued.*

AND

*Application of the Transportation Commission of the Maritime Board of Trade for an Order directing the Canadian National Railways to publish an all-rail rate on grain in carloads from Armstrong, Ont., via National Trans-continental Railway to Saint John, West Saint John, and Halifax, N.S., of 19.34 cents per 100 pounds for export.*

AND

*Application of the Canadian National Millers' Association, Montreal, that, in the event of the last mentioned application being granted, the order be extended to include the same rate on grain products for export.*

File No. 34123.10.2

THE CHIEF COMMISSIONER:

The Halifax Harbour Commissioners have drawn the attention of the Board to the fact that by section 4 of the Board's General Order No. 448—"In the matter of the Order in Council, P.C. No. 886, of June 5, 1925, requiring the Board of Railway Commissioners for Canada to make a full and complete investigation into the whole subject of railway freight rates in the Dominion of Canada"—the rate of 34½ cents per hundred pounds on wheat and 33 cents per hundred pounds on other grain for export from Port Arthur, Fort William,

Westfort and Armstrong, Ontario, to Quebec, as then shown in supplement No. 32 to Canadian Railway Tariff C.R.C. No. E-447 was thereby disallowed, and the Canadian National Railway Company was directed to publish and file, in substitution thereof, a tariff showing 18·34 cents per hundred pounds on all grain for export from Port Arthur, Fort William, Westfort and Armstrong, Ontario, to Quebec, and by their application duly filed the Halifax Harbour Commissioners now ask for an order directing that the present rate from Fort William, Port Arthur and Armstrong to Halifax of 21·30 cents per bushel on wheat and 20·40 cents per bushel on other grain should be disallowed, and that there should be substituted therefor a tariff showing a rate of 11·6 cents per bushel on all grain. This, they allege, would mean that Halifax would then enjoy the benefit of the rate to Quebec under General Order No. 448, namely 11 cents per bushel, and that the present existing differential from Montreal and Quebec on grain and flour to Halifax, namely, ·6 cents per bushel be continued.

The Canadian National Millers' Association have intervened and their submissions were heard simultaneously with the application of the Harbour Commissioners. They state that the product of the Canadian flour mills is in competition with that of other countries, and that any reduction in the transportation charges of Canadian grain would react unfavourably upon their industry. Consequently they asked that if the prayer of the applicant Harbour Commissioners be granted, the order with respect to the same be extended to include a like reduction in rates on grain products for export, for the reason that if a lower rate on wheat be put in without a correspondingly lower rate on grain products, the benefit of such reduction will go entirely to foreign millers, who will profit by the difference between the rate on wheat and that on flour and other grain products.

The application of the Halifax Harbour Commissioners is supported by the Maritime Transportation Commission which by its petition duly filed asks for an Order directing the Canadian National Railways to publish an all-rail rate on grain in carloads from Armstrong, Ontario, Port Arthur, and for Fort William and Westfort, Ontario, via the National Transcontinental Railway to Saint John, West Saint John and Halifax of 19·34 cents per 100 pounds for export, which is equivalent to the figure named by the Halifax Harbour Commissioners, namely, 11 cents a bushel. Inasmuch as the cost figures submitted by the railway companies are calculated on the hundred pound basis, the comparisons hereinafter made will be clearer if the latter unit of cost is used throughout.

The Toronto Board of Trade has laid its views before us, alleging that if the application be granted, the all-rail export rate of 19·34 cents per hundred pounds from the head of the lakes to Halifax and Saint John will be lower than the average lake-and-rail rate to New York via Buffalo, and that any disturbance in this rate situation would defeat the desired object and result in great disadvantage to Ontario millers.

The Board has also been put in possession of the submissions of the Montreal Board of Trade and of the Montreal Corn Exchange upon the issues involved in this application. They both agree, in substance, with the representations of the Toronto Board of Trade, and in addition thereto the Montreal Board of Trade sets out that:—

“There is another principle involved in the granting of material rate reductions to certain territories or in certain commodities. The rail rates on general merchandise in Canada are still very much higher than those prevailing before the war, and as the railway earnings are improving, shippers generally have been and are looking forward to reductions made possible by this improvement.”



It will be noted that these three important bodies, namely, the Toronto Board of Trade, the Montreal Board of Trade, and the Montreal Corn Exchange, agree in stating that the rate asked for would be lower than the Buffalo-New York rate and because of that, and the consequences which they say would follow therefrom, they are in opposition to the petitioners.

While the application is directed against the Canadian National Railway alone, the Canadian Pacific Railway Company has joined in submitting answer, and therein they have, in substance, set out:—

(a) That “the ports of Saint John and Halifax are on an exact equality with what might be termed the competing United States Atlantic ports of Portland, Boston, New York, etc.”

(b) The same conditions and circumstances do not attend the movement of export grain to Saint John and Halifax on the one hand and to Quebec on the other, Quebec being a summer port only, whereas in the case of Saint John and Halifax the grain moves during the winter season and the Canadian rail route is directly competitive with the American rail route. During the winter season the reservoir of grain is the Georgian bay ports in Canada and Buffalo for the United States, and the distance from the latter point to New York is less than one-half the distance from Georgian Bay to Saint John, and about one-third of such distance to Halifax.

(c) That the only result of allowing the application would be a general lowering of rates to the disadvantage of the carriers and no advantage to the ports concerned.

In addition to the above, the Canadian Pacific Railway Company has filed a reply to the application of the Millers' Association and has pointed out:—

(a) That when the all-rail export rate of 18·34 cents per 100 pounds was established to Quebec, the milling industry was not affected because Quebec as a port of export is only available during the season of navigation.

(b) This condition would not hold if the rates were extended to the winter ports of Saint John and Halifax, and the reductions would necessarily affect the milling industry, as the rate on flour (36½ cents per 100 pounds) is the same from Port Arthur, Fort William and Armstrong to Halifax and Saint John as from Minneapolis and Duluth to New York, and lowering of same would cause reprisals and have no other result.

In reply to the joint answer of the railways, the applicants say, *inter alia*, that, as in the case of the Quebec Harbour Commissioners, this application is “that an export all-rail rate be made from Fort William and for Port Arthur to the seaboard, that would be competitive with the all-water route.”

While it is unnecessary to repeat the detailed and exhaustive comparison of rates and distances contained in the judgments of the Board on the Quebec application, it is well, I think, to briefly outline a few pertinent facts in order that the merits of this application may be easily and readily understood and determined.

Underlying the grain export situation, there is the fact that Port Arthur, Fort William and Duluth are the centres on which is based the grain trade of Western Canada and that of the northwestern United States, the price paid the producer being the market price at these lake ports less freight from shipping points; and, as regards the cost of carriage of grain to the seaboard from the Prairie Provinces of Canada, and from corresponding territories in the United States (western Minnesota, North and South Dakota and Montana), the rate

structure in both countries has for many years been maintained on a basis of equality, as regards the export rate, between the cities of Port Arthur and Fort William on the one hand and the United States cities Duluth and Superior on the other, both via all-rail routes and otherwise.

And further, when the grain either of Canadian or United States origin, reaches the elevators at the foot of the lakes (including such places as Midland, Depot Harbour, Collingwood, Owen Sound, Goderich, Sarnia, Port Colborne, Buffalo, Ogdensburg and Oswego) the export rate therefrom—subject to the slight variation shown—are maintained on a parity to Montreal, Quebec, Boston, Portland, Saint John, Halifax, Baltimore, Philadelphia, and New York, as particularly specified hereunder.

The following tabulation furnished by the Canadian National Railways shows the export rates immediately above referred to:—

From	To	Rate per 100 lbs.	Rate per bushel	Miles via Canadian National Railways		
Port Arthur, Ont.....	Halifax, N.S.....	} 35-5	} 21-3	1719		
	Saint John, N.B.....			1551		
	Portland, Me.....			1312		
	Boston, Mass.....			1311		
	New York N.Y.....			1370		
	Philadelphia, Pa.....			1390		
	Baltimore, Md.....			1370		
	Montreal, Que.....			34-5	20-7	1018
	Quebec, Que.....			18-34	11-0	1073

NOTE.—Rates from Armstrong, Ont. are the same as from Port Arthur.

NOTE.—The rate via the Canadian Pacific Railway from Port Arthur—Fort William to Quebec is 34½ cents per 100 pounds which is the same to Montreal and is also the same as carried by the Canadian National Railways prior to B.R.C. Gen. Order 448.

From	To	Rate per 100 lbs.	Rate per bushel	Miles via United States Roads		
Duluth, Minn.....	Portland, Me.....	} 35-5	} 21-3	1517		
	Boston, Mass.....			1445		
	New York, N.Y.....			1374		
	Philadelphia, Pa.....			34-5	20-7	1282
	Baltimore, Md.....			34-0	20-4	1262

From	To	Rate per 100 lbs.	Rate per bushel	From Midland miles via Canadian National Railways
Midland, Ont..... Depot Harbour..... Collingwood..... Owen Sound..... Goderich..... Sarnia..... Port Colborne.....	Montreal, Que.....	14-34	8-6	383
	Quebec, Que.....	14-34	8-6	551
	Boston, Mass.....	15-17	9-1	675
	Portland, Me.....	15-17	9-1	677
	Saint John, N.B.....	15-17	9-1	1015
	Halifax, N.S.....	15-17	9-1	1183

NOTE.—The distance from the other Lake and Bay ports is greater than from Midland, running as much as 86 miles, and this means an even lower ton mile earning than from Midland.



From	To	Rate per 100 lbs.	Rate per bushel	From Midland miles via Canadian National Railways
		cts.	cts.	
Buffalo, N.Y.....	Boston, Mass.....	15-17	9-1	476
	New York, N.Y.....	15-17	9-1	396
	Philadelphia, Pa.....	14-67	8-8	416
	Baltimore, Md.....	14-67	8-8	396
Ogdensburg.....	Boston, Mass.....	15-17	9-1	421
Oswego.....	Boston, Mass.....	13-67	4-20	379
	New York, N.Y.....	13-67	4-20	323

Weighted average rates on wheat via Lake, season navigation, 1927.

Port Arthur, Ont.—Georgian Bays Ports.....	2-81 cents per bushel.
Port Colborne.....	2-55 “
Buffalo.....	2-79 “
Montreal.....	8-53 “
Quebec.....	8-53 “

From this it appears that two sets of rates have been established to maintain a parity in the cost of carriage of grain to the seaboard from Port Arthur, Fort William and Duluth, at the figure 35·5 cents per 100 pounds, and a further parity, with a few exceptions, between rates from the lower lake and bay ports and those from Buffalo, to the seacoast, at the figure 15·17 cents per 100 pounds.

The Canadian National Millers' Association furnished the Board an exhibit (No. 28) from which the following is extracted:—

#### WHEAT EX FORT WILLIAM VIA BAY PORTS, EXPORTED

Via	Montreal	Quebec	Saint John	Halifax
	cts.	cts.	cts.	cts.
Fobbing at				
Fort William.....	2-91	2-91	2-91	2-91
Lake rate.....	3-60	3-60	3-60	3-60
Rail rate to.....	14-34	14-34	15-17	15-17
	20-85	20-85	21-68	21-68

The above statements indicate very plainly:—

A. That the export rate upon wheat (35½ cents) all-rail from Fort William and Port Arthur to Halifax and Saint John, is in line with the all-rail rate from Fort William and Port Arthur to New York and other American ports, and corresponds, as shown above, with the all-rail rate from Duluth, U.S.A., to Portland, Boston and New York.

B. That from the southern Bay ports to Halifax and Saint John the rate (15·17 cents) is in line with the all-rail rate from such Bay ports to Boston and Portland and with the all-rail rate from Buffalo to Boston and New York; although slightly higher than the all-rail rate from Buffalo to Philadelphia and Baltimore, and from Oswego to Boston and New York.

C. That the latter scale of rates from the southern Bay ports to Boston and Portland, and from Buffalo to Boston and New York, is distinctly lower than the all-rail rate from Port Arthur and Fort William to Halifax and Saint John, as well as to New York and other United States ports, in the relation of 35½ to 15·17.

D. That grain from Fort William and Port Arthur for export via Buffalo, carries a rate made up of water transport to Buffalo from Fort William and Port Arthur of 3·60 cents per 100 pounds plus 15·17 cents rail rate from Buffalo to the seaboard, in all 18·77 cents per 100 pounds.



Having before us the rate named immediately above (18·77 cents) applicable to grain shipped from Port Arthur and Fort William down the lakes to Buffalo and thence to the seaboard, applicants claim that there should be a very substantial reduction in rate for the carriage of grain exported all-rail from the lake-head cities to the ports of Saint John and Halifax for which 35·5 cents per 100 pounds is charged. They refer us to the agreement under the Dominion statute of 1903 which says, regarding freight to be carried on the Transcontinental Railway, that the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports. It is claimed that to procure the equality contemplated by the statute, the present rate all-rail from Port Arthur and Fort William to Saint John and Halifax of 35·5 cents per 100 pounds should be reduced to 19·34 cents per 100 pounds, as against the rate via Buffalo to United States ports of export, namely, 18·77 cents.

As many references are made to the Transcontinental Railway Act, 3 Edward VII, chapter 71 (1903), and to the agreement thereunder, paragraph 42 of the latter is hereunder set out:—

“42. It is hereby declared and agreed between the parties to this agreement that the aid herein provided for is granted by the Government of Canada for the express purpose of encouraging the development of Canadian trade and the transportation of goods through Canadian channels. The company accepts the aid on these conditions, and agrees that all freight originating on the line of the railway, or its branches, not specifically routed otherwise by the shipper, shall, when destined for points in Canada, be carried entirely on Canadian territory, or between Canadian inland ports, and that the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than United States ports, and that all such traffic, not specifically routed otherwise by the shipper, shall be carried to Canadian ocean ports.”

And so the applicants are before us contending that, in view of the statute of 1903 and the agreement thereunder, they are entitled to the same rate from the head of lake Superior to Saint John and Halifax, as prevails from Buffalo to New York and other United States ports, plus the cost of carriage of the grain from said ports to Fort William and Port Arthur to Buffalo. They contend that it is not an adequate answer to say that the present rate schedules are made up with a view of equalizing two sets of rates, viz., those all-rail from Port Arthur and Fort William with those all-rail from Duluth and Superior to the seaboard, on the one hand; and with a further view of equalizing the rates from Canadian southern Bay ports with those from Buffalo to the seaboard, on the other hand. We are confronted with a statute which provides, or contemplates (applying same to carriage of grain), that the rate to the point of export from Fort William and Port Arthur over the railway to which the statute applies, shall not be greater via Canadian ports than by any other route, and if it is to be observed, applicants say that no other course is open than to equalize these rates.

In this discussion, the point of origin for Canadian grain exported via Buffalo and United States ports on the one hand, and via Canadian ports on the other, is assumed to be Fort William and Port Arthur, and rate comparisons are made from that basis. Of course, as a matter of fact, the several points of origin are much further west, namely at the different stations along the line of railway where the grain is picked up, but from such latter points eastward, the grain, whether ultimately destined to go down the lakes to Buffalo, or to go all-rail to Canadian ports, travels over an identical route and on the same rate to the head of lake Superior.

The grain being gathered up at various points of origin on the line of railway in question, is carried thence to Fort William and Port Arthur. That much of its journey is common to all of it. At these cities, a certain portion is diverted down the lakes to Canadian points, and to Buffalo, N.Y., and thence for export to the seaboard, and this latter grain carries a rate of 15·17, plus water carriage, per 100 pounds. That part of the grain that continues its journey over the line of the Transcontinental Railway, having originated thereon, to Halifax and Saint John, carries the rate of 35·5 cents per 100 pounds, which cannot be said to be in conformance with the statutory agreement. Grain from points of origin far west at the head of lake Superior, is carried to a common point in both instances, namely, to the head of the lakes, there it is divided, a portion going down the lakes to Buffalo seeking export that way, another portion continuing to Canadian ports all-rail, and inasmuch as the agreement under the statute says specifically that all freight originating on the line of railway or its branches shall be subject to a through rate on export traffic from the point of origin to its point of destination, at no time greater via Canadian ports than via United States ports, there seems to be no justification for contending that from the head of the lakes the rate can, conformably to the agreement, be less, if it takes a certain route through the United States, than is imposed upon the traffic when it follows the railway in question to its point of export on Canadian territory. These two divergent routes from Port Arthur and Fort William to the sea, namely, the lake and rail via Buffalo to United States points, and the all-rail movement from Fort William and Port Arthur to the Canadian ports of Halifax and Saint John, now carry a difference 35·5 as against 18·77 cents, which disparity the statute and agreement set out to overcome.

Placing them again side by side, we have an all-rail export rate to Halifax and Saint John from Port Arthur and Fort William of 35·5, as above stated; whereas the export rate from the same two points, via Buffalo, through United States ports involves a lake rate of 3·6 cents per bushel, plus rail from Buffalo to points of export 15·17, making a total of 18·77 cents.

In their comparison of rates, the railways wait until the Canadian grain destined to seaports through Buffalo has reached the latter point, and then set up their export rate figures from Buffalo, in comparison with export figures from other southern Bay ports, showing equality therein. The fact is ignored that the grain for export at the foot of the lakes (whether through Buffalo or other ports) has passed through Fort William and Port Arthur, and there parted company with other grain destined for export via the Transcontinental Railway, through Canadian ports with which the comparison in rate should be made at the parting of the ways, viz., at Port Arthur and Fort William, if the terms of the statutory agreement are to be observed.

I do not think it is sufficient answer for the railways to say, we will wait until the grain from Port Arthur and Fort William is taken down the lakes and stored there, and from these points of storage make comparison in rate with that from other like storage points. The statute says, from the point of origin the rate shall not be greater over the Transcontinental Railway than by any other route.

In answer to the application, it has been asserted by the railways that the grain export rates through Canadian ports are now on a parity with those via United States ports, and this statement is repeated by the Toronto Board of Trade, the Montreal Board of Trade, and the Montreal Corn Exchange, all of which bodies express apprehension that a disturbance in the existing equality of export grain rates would operate disadvantageously in many quarters.

The statement that the grain export rates are now on an equality is inaccurate or incomplete in a very important particular. If comparisons be confined to rates to Canadian seaports from the lower Bay ports, as against those to the United States seaports from Buffalo (15·17 in each case), the statement



is true enough. Further, if the equality be affirmed as between Fort William and Port Arthur on the one hand, and Duluth and Superior on the other hand, all-rail from each (35·5 in both cases), no fault can be found with this assertion; but if the all-rail rate from the cities at the head of lake Superior to Halifax and Saint John, 35·5, be compared with the rate from the head of the lake to United States ports via Buffalo (15·17 plus 3·60), the statement cannot be verified, and therein is the strength of the position which the petitioners are occupying to-day, when they allege and prove this inequality, and direct our attention to the provision of the statute that the export rates shall not be greater over the railway in question from the point of origin via Canadian seaports than by any other route. The statute in question was passed in 1903 and was enacted with full knowledge of the situation. The export route from the head of the lakes via Buffalo and United States ports was then in full use, and the intention of the statute was to equalize the rate from Port Arthur and Fort William via the Transcontinental railway to the Canadian seaports, with the rate from Port Arthur and Fort William via lake to Buffalo and thence rail to the United States seaboard, a route which was well travelled at that time.

Our attention has been forcibly and properly drawn to the inadvisability of disturbing a situation in which rate equality now exists, and emphasis has been laid upon the relationship of the rates from various points at the foot of the Great Lakes to the seaboard within Canada and the United States. This is a most important matter and with what has been said upon that point I quite agree. But it will be observed that the request of the Halifax Harbour Commissioners involves no interference whatever with these schedules. The application before us is not concerned with them. Enough has been said, I think, to make it clear that it is the export rate all-rail from the head of the lakes which is sought to be reduced, and if the reduction asked be accorded, it will be noticed that such reduced rate from the lake head cities, Port Arthur, Fort William and from Armstrong, will still be higher than that which now prevails to the seaboard from the cities at the foot of the lakes including Buffalo. It is a misapprehension to conclude that the rate now prevailing from Midland, Depot Harbour, Collingwood, Owen Sound, Goderich, Sarnia, Port Colborne, Montreal, Buffalo, Ogdensburg or Oswego, or from any of them, will have to be lowered to meet the reduced rate asked by the applicants. The export rates from these places run from 13·67 to 15·17 cents per 100 pounds, as shown by the tabulation on a previous page. Even the addition of the lake rate of 3·60 cents leaves them below the 19·34 cent rate here asked for.

An instructive feature of the situation is presented in the answer filed by the railways, wherein it is stated,—

“the great reservoir of grain from which all the Atlantic ports draw is the Georgian Bay ports in Canada and Buffalo in the United States, and the distance from the latter point to New York is less than one-half of the distance from Georgian Bay to Saint John and about one-third of such distance to Halifax.”

It is evident from the above that the grain forwarded to Halifax and Saint John during the winter season is drawn from the elevators at the foot of the lakes, which carries a lower rate from these points to the last mentioned cities than the rate asked in this application. This lesser rate also applies from all points of storage at the foot of the lakes to the seaboard, from which it seems clear that no lowering of the rates from these latter points is called for in order to maintain their competitive superiority as regards grain export.

As to the reaction of a 19·34 cent rate to Halifax and Saint John upon the existing 35·5 cent rate from Port Arthur and Fort William to Portland, Boston, New York and Baltimore, it may be remembered that the evidence has estab-



lished that grain ex Canada to these latter ports in the winter season is drawn from the reservoirs at the foot of the lakes which carries a lower rate than 19·34 cents, and therefore would not seem to be affected by the lowering of the rate as requested. It is to be noticed that the rate to Quebec, 18·34 cents, has had no effect upon the rates to these cities, and the reason, I think, is correctly outlined by the Deputy Chief Commissioner at p. 1950, vol. 558, during the hearing of this case, wherein he said that the reduction of the rate to Quebec "was simply bringing the National Transcontinental to the lake-and-rail basis already in force from Bay ports to Montreal, and which existed from Buffalo to New York and Boston, therefore it did not disturb the relativity of the rate structure between the United States and Canada except in so far as the Transcontinental was concerned."

The only disturbance which could be attributable to such reduction might be a lowering of the present rate of 35·5 cents from Duluth and Superior all-rail to the seaboard, to correspond, perhaps, with the proposed rate of 19·34 cents from Fort William and Port Arthur to Halifax and Saint John. But such reduction, neither on the part of Duluth nor Fort William, would interfere with the parity of rates now existing between the cities at the foot of the lakes, neither would it give a rate less, or as low as, the export rates which now prevail from the cities at the foot of the lakes, including Buffalo.

In view of the above, it may be noted that the joint answer of the railways to this application can hardly be considered apposite or conclusive. If the application were to equalize the rates from Fort William and Port Arthur to Halifax and Saint John, with those from the foot of the lakes to the seaboard; or to lower the rates from the grain reservoirs at the foot of the lakes to Halifax and Saint John, every word they say would be filled with meaning and pertinence, and this seems to be the impression of some interested parties. But what is sought by this application does not involve any disturbance in the relativity of the rates from these latter points, both Canadian and United States, to the seaboard which, it will be observed, will still stand at a lower level than the 19·34 cent rate requested here, and therefore it is clear that no reason will be created for the disturbance and reductions apprehended and forecast in the reply of the railways and in the other submissions on record.

But in discussing the question, it is not to be forgotten that the rate now sought by the petitioners must be brought to the test of being a fair and reasonable rate, both to the producer and to the railways, under the provisions of the Railway Act and such other elements as we are entitled to weigh and consider. In the words of the statute before referred to, "the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports"; consequently the rate to be set for export over this road through Halifax and Saint John must compete with the rate through Boston, Portland or other United States ports. In determining what rate may be fair and reasonable, the propriety of taking into consideration the statutes and agreement ratified by legislation, and the expenditure of some three hundred and thirty millions of dollars of public money in constructing or aiding the line of railway, now a part of the Canadian National Railway system, for the purposes declared in the Act; as well as giving attention to the objects expressed in Orders in Council Nos. 886 and 24, was sharply challenged by counsel for the railway companies in the discussion of the Quebec Grain Rates Case. That question is now at rest. In the judgment of the Board upon the application of the Canadian National Railways for leave to appeal from its decision to the Supreme Court of Canada upon questions of jurisdiction and law involved in that case, 36 C.R.C. p. 81, the right to give

consideration to such extraneous elements was squarely and purposely raised and put forward as the decisive issue. In disposing of the application Mr. Justice Lamont of the Supreme Court of Canada said (36 C.R.C. p. 87):—

“The Canadian National Railways desire to appeal from the order fixing the rates from Armstrong to Quebec city. Their contention is that the Board misdirected itself by holding that it had jurisdiction to look at and use, as a basis for fixing the rates, the Crowsnest agreement from Calgary to Fort William, and the agreement of July 29, 1903; and section 325 of the Railway Act was cited in support thereof. That section declares that the powers of the Board under the Act to fix and determine just and reasonable rates shall not be limited or in any manner affected by the provisions of any Act of Parliament of Canada, or by any agreement made or entered into pursuant thereto, save and except as to rates on grain and flour from points west of Fort William to Fort William and Port Arthur. The wording of this subsection, on any fair reading of it, is not capable, in my opinion, of being construed as a restriction upon the powers of the Board to fix the rates set out in the order. On the contrary it seems to me from the language used that Parliament contemplated that the Board would look at and consider the statutes and agreements relating to rates which had been in force or agreed upon, and desired to make it clear that, with the exception of the Crowsnest agreement, the Board was not to be bound by any such statute or agreement. The Board was, therefore, entitled to take into consideration the agreement to which objection was taken. Taking them into consideration, however, does not mean, as I indicated above, that the Board is under any obligation to adopt the rates fixed or agreed to therein. What weight they shall have is, in my opinion, left to the discretion of the Board subject to this, that after it has given full consideration to these agreements as well as to the other matter to which reference was made so often in the argument, namely, the expenditure of three hundred and thirty million dollars by the Parliament of Canada in constructing or aiding the lines now forming the Canadian National Railways, and the desire of the Government, as expressed in the Order in Council, to encourage the movement of traffic through Canadian ports, the obligation still rests upon the Board of fixing rates which are ‘fair and reasonable’ from the standpoint not only of the producer but also from the point of view of the railways.

“Has it been made to appear on this application that it is fairly arguable that the rates fixed by Order No. 448 are unfair or unreasonable? I am very clearly of opinion that it has not. Not only have the Canadian National Railways failed to show that the Board misdirected itself, but their own conduct since the Order was made has been such as to justify the inference that, in their judgment, the rates were not unfair or unreasonable.

“The application will be dismissed with costs.”

The Board has determined that the rate of 18·34 cents from Port Arthur and Fort William to Quebec is a fair and reasonable rate, and this rate now prevails.

Its reasonableness and fairness must now, I think, be held to be *res judicata*, and that being so, the immediate question before us is, whether the extension of such rate to the eastern ports of Halifax and Saint John, with an increase of one cent per 100 pounds for the extra haul involved, is a reasonable and fair proposition.

As an initial rate for the carriage of grain for such further distances, it would be difficult to justify but regarding it as a prolongation of the previous haul, it becomes subject to other considerations as being a through movement, and carrying a proportion of a through rate.



In building freight rate schedules, it frequently occurs that conditions of carriage and trade lead the carriers to prescribe forwarding rates covering lengthy distances at a very slight increase, as well as blanket rates covering distances of great disparity within a prescribed territory at the same figure, and within which territory the rate is the same to all points. In making such rates the character of the commodity carried, and other considerations figure, and examples are not wanting in which large portions of Ontario and Quebec carry the same rate from outside points.

Regarding forwarding rates, much of the same principles prevail. In the case of *Kerr v. Canadian Pacific Railway Company*, 9 C.R.C. p. 207, the matter is discussed and lucidly dealt with. The judgment of the Assistant Chief Commissioner appears at p. 208 and is as follows:—

“ May 10, 1909. Mr. Commissioner McLEAN:

“ Franklin is a station on the Canadian Pacific Railway, 126 miles from Winnipeg. The rate from Franklin to Winnipeg, under the company's special mileage tariff on grain, grain products and vegetables, is thirteen cents per hundred pounds; this is also the eighth class rate in the Canadian classification. It is contended that this rate is discriminatory since the rate on grain and grain products from Franklin to Fort William, a distance of 550 miles, for furtherance east is likewise thirteen cents. It cannot be urged that this constitutes a discrimination against the applicant. The rate to Fort William is a division of a through rate concerned with a through shipment to an eastern market. Where grain and grain products move to Fort William for local consumption they move on the company's special mileage tariff and take a rate of 29 cents. The through rate of which the 13 cents form a part is affected not only by the competition of other grain growing territories; it was also reduced by the provisions of the Crowsnest agreement. The conditions affecting the through shipments handled on this through rate are such that a division of such a through rate cannot be taken as the measure of the reasonableness of a local rate from Franklin to Winnipeg. The complaint should therefore be dismissed.

“ The Chief Commissioner concurred.”

From the above facts it might be argued that for the distance from Winnipeg to Fort William—424 miles, or four-fifths of the whole journey—the grain was carried for nothing, no extra charge being made, and that was, in substance, an objection made, or suggested, by counsel for the railways here, who asked if it was fair to be compelled to carry grain from Quebec to Halifax and Saint John for one cent per 100 pounds. As an abstract isolated proposition I think everyone would say no, but when the other elements of the situation are assembled and considered—when such increased distance is regarded as a prolongation or furtherance of a movement which carries a through rate, when it is seen that like treatment in regard to forwarding rates has been accorded to other localities where equally marked differences in distances exist, when it is remembered that a rate of less than one cent per 100 pounds is now, and has been for years, the existing differential for carriage of export grain from Montreal to Saint John, and from Quebec to Halifax, the question presents itself in a very different light, and seems to amply justify the suggested forwarding rate between Quebec and the eastern seaports in connection with the export grain movement.

The increased mileage involved in the run from Fort William to Saint John, over the distance from Fort William to Quebec, is 387 miles, according to the schedule of distances and rates filed by the Canadian Pacific Railway Company at the hearing, and being exhibit No. 26. By the tabulation filed by the Canadian National Railways, the extra distance to Saint John is 478 miles. For this prolongation of the journey the differential of one cent is suggested; against which



may be placed the continuation of the journey above referred to, from Winnipeg to Port Arthur, where for an increased distance of 424 miles no increase in rate whatever is made. To Halifax from Port Arthur the distance is longer. The figures submitted by the Canadian Pacific Railway Company show an excess of 649 miles, and by the Canadian National Railway 646 miles, over the mileage from Fort William to Quebec.

On a previous page reference is made to an exhibit filed by the Canadian National Millers' Association. It is headed "Wheat ex Fort William via Bay Ports, exported." From it we learn that the lake rates and rail rates are as follows:—

Via	Montreal	Quebec	Saint John	Halifax
	cts.	cts.	cts.	cts.
Lake rate.....	3·60	3·60	3·60	3·60
Rail rate to.....	14·34	14·34	15·17	15·17

From the above it appears that the rail rate from Fort William to Montreal and Quebec is 14·34, and the furtherance rate to Halifax and Saint John from Quebec and Montreal is considerably less than one cent. It is to be assumed that the Canadian National Railways would not discriminate against the all-rail route from the head of the lakes by saying, if the grain comes to Quebec via the Bay ports we will carry it to Halifax and Saint John at the rate of 83/100 cents per 100 pounds, but if it comes over the Transcontinental we object to carrying it to the latter ports even at an increased rate of one cent.

It has been pointed out above that a substantial parity of export rates now exists to the seaboard from shipping points at the foot of the lakes within Canadian territory as compared with the rates from Buffalo and other United States points; and it is argued that, having at present this parity of rates, no necessity exists for making the reduction in rate which is now sought from the head of the lakes to Halifax and Saint John. It was further contended that, if granted, this rate would be a competitive rate which, under a series of judgments, has been held to be beyond the power of the Board to initiate. Two observations may be made upon these points. In the first place, in none of the decisions with reference to competitive rates, has the Board ever been confronted by a statute declaring that the rates shall be no higher one way than another, as in the present case. This circumstance, in my view, takes it wholly out of the scope of the decisions concerning competitive rates as they are ordinarily referred to, and puts it upon the basis of the rate directed by the statute which contains no limitation as to competitive or non-competitive rates.

And in the next place, the existing export rates over the Canadian railways, from Montreal and from other points to Halifax and Saint John, are admittedly upon the basis of an understanding between the Canadian and the United States railways under which such equality of export rate is maintained. Therefore this parity of rates upon export traffic does not depend upon the statutory provision now invoked. Such parity can be altered whenever it would appear in the interests of the Canadian carriers that it should cease. This statute stands, and I think it should be construed, as a guarantee to the people of the eastern Maritime Provinces that their export trade shall not be jeopardized by inequality of rates. The statute assures, and was intended to assure the people of the eastern Maritime Provinces, that carriage of traffic originating on the Transcontinental Railway from the point of origin to the ocean, should be no more expensive through their ports than when such traffic is routed through United States ports.

It is therefore essential that the effect of the statute be not whittled away by losing sight of the predominant feature of equality in export rate contained

in the statutory agreement, or by subordinating it to a close calculation of mileages in connection with furtherance rates, or to the reasons which surround the Board's decisions regarding competitive rates, otherwise the whole effect of this provision of the statute is nullified, as far as that portion of Canada which lies east of Quebec is concerned.

From the point of view at which this question is given consideration, it is hardly necessary, if it were possible, to attempt specific answers to questions dealing with the cost of transportation of grain from various points, to which the counsel of the Canadian National Railways has requested the Board to make reply. I am in agreement with the view expressed by the learned Deputy Chief Commissioner at p. 198 of the judgment dealing with the Quebec Grain case, wherein he says:—

“In this connection, it will be important to remember Mr. Lloyd's evidence (Record Vol. 494, p. 1102 *et s.*). Mr. Lloyd is the Assistant Controller and in charge of the Statistical Department of the Canadian Pacific Railway.

“Mr. FLINTOFT: What would you say as to the possibility of getting the cost of any particular commodity?”

“A. Well, we do not know; there has never been any system devised yet by which you can get the cost of carrying any one commodity.

“Q. Mr. Lloyd, I want to know whether it is in your opinion possible to work out the cost of carrying any particular commodity?”

“A. It certainly is not possible to arrive at the cost of transporting any individual commodity.”

And, at vol. 495, pp. 1527 and 1528:—

“Q. Would you say that that ‘average cost per gross ton mile’ would be a fair figure to apply to the cost of moving grain in train load lots?”

“A. I do not know what the cost of handling grain is.

“Q. Is there any information in your statistical department that will give you that?”

“A. We have nothing to tell us the cost of handling any commodity.”

Mr. Mallory, himself, stated (vol. 501, pp. 4323-25):—

“You asked me, and I gave you an estimate to the best of my ability. It is an estimate based upon our best experience.”

And at pp. 4355-56, vol. 502:—

“You cannot find the cost of moving a commodity exactly, but if 60 per cent of your business is one thing, you are in a fair way of arriving at a reasonable estimate.” . . . “In my opinion, no accurate and definite conclusion can be drawn from the information on the record as to the actual cost of moving grain in train load lots from Armstrong to Quebec.”

The testimony above referred to, given by Mr. Lloyd, Assistant Controller in charge of the Statistical Department of the Canadian Pacific Railway, and that of Mr. Mallory, Director of Statistics of the Canadian National Railways, shows conclusively that neither of those gentlemen could then answer the questions to which the Board is now invited to give response.

Determining factors in this application are, that a furtherance rate appreciably more than the existing uniform differential between Quebec and Halifax and Saint John upon such commodity is suggested; that the export rate now



asked is not less than the export rates via Buffalo and various United States ports; that the existing charge of 35·5 cents is far above the rates from the latter points and is not a compliance with the statutory agreement under which the Transcontinental Railway was built; and that the million or so inhabitants of the eastern Maritime Provinces bore their share in the cost of construction of this railway built to enable their ports to participate in this traffic. Taking the above into consideration, I am of opinion that the rate asked for, namely 19·34 cents per 100 pounds, is a fair and reasonable one. Otherwise there would be a complete denial to the eastern Maritime Provinces of any benefit to them by the construction of the Transcontinental Railway, for which they have so heavily paid. If an equality of through rates on traffic exported from Halifax and Saint John be denied, the Transcontinental Railway ends at Quebec, as far as the eastern Canadian export cities are concerned.

As to the submission of the Canadian National Millers' Association, the railways have well established the fact that, as far as concerns the export rates on flour, as well as grain, from Buffalo and from the Bay ports to the ocean, a parity obtains. This whole application is confined to the consideration of a just and reasonable rate for export traffic via the Transcontinental Railway, having regard to the statutory agreement and other elements which have been so often enumerated. Unless the Canadian National Millers' Association can bring itself within the provisions of the statute of 1903, the same conditions cannot be considered when dealing with the flour rate, and still less is it open to the Board to consider the extension to other railways of the rate asked for by the National Millers' Association. The representations which they made before the Board were confined to a consideration of the position of the eastern millers and, as far as the record discloses, none of their industries are established upon the line of the National Transcontinental Railway. Having regard to the agreement, which is not confined to grain, it may be urged that mill products having their origin on the National Transcontinental Railway should not be discriminated against by a lower export rate through other countries, but such conclusion does not by any means carry with it the result that the products of mills not on the railway in question are, by reason of the statutory agreement referred to, entitled to a like reduction. From the standpoint of flour and mill products originating on the Transcontinental Railway, the application must be given the fullest consideration, and the Board may await further developments in order to pronounce definitely what would be a just and reasonable rate upon mill products. It is less difficult to deal with an application concerning grain for export, because of the uniformity of the product; but as regards grain products, the situation both east and west would have to be further developed to enable the Board to arrive at a conclusion as to what might be a just and reasonable rate, and no doubt other features would present themselves for consideration; but as regards the basis of the intervention on the part of the Canadian National Millers' Association, namely, that the reduction sought by the applicants in their export rate would inure to the advantage of foreign millers, it is to be noted that such millers are now obtaining Canadian grain carried from Port Arthur and Fort William to the seaboard at a lower rate than is here sought, and it is not clear how the extension of the 19·34 cent rate to Halifax and Saint John could have the result apprehended by the intervenants when from other northern Atlantic ports an export rate less than 19·34 cents now prevails and has prevailed for a number of years, and I would therefore dismiss their application with the statement that upon fuller data and particulars being supplied, consideration may again be given to it.

As regards the main application, it is abundantly clear that the rate asked for by the Halifax Harbour Commissioners, and by the Transportation Commission of the Maritime Board of Trade, is not lower than that which prevails



from Fort William and Port Arthur via Buffalo to United States seaports, and for the reasons above set out, I am of opinion that an order of this Board should issue directing the Canadian National Railways to publish an all-rail rate on grain in carloads from Fort William, Port Arthur and Armstrong, Ontario, to Halifax and Saint John and West Saint John for export, at the rate of 19·34 cents per 100 pounds, in substitution of the present rate.

August, 1930.

Commissioner Norris concurred.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made to direct that all rail rates on grain, in carloads, from Armstrong, Ont., via National Transcontinental Railway, to St. John, West St. John, N.B., and Halifax, N.S., shall be 19·34 cents per 100 pounds for export. In the application of the Halifax Harbour Commissioners, what is asked for is that the existing tariffs from Fort William, Port Arthur, and Armstrong to Halifax of 21·30 cents per bushel on wheat and 20·40 cents per bushel on other grains shall be disallowed, and that there be substituted therefor a tariff showing a rate of 11·6 cents per bushel on all grain.

While the applications are worded differently, the effect is that the rate of 18·34 cents from Armstrong to Quebec fixed by the judgment in the *General Rates Investigation* shall be taken, and a differential of 1 cent be added thereto making a total rate of 19·34 cents.

In the decision in the *General Rates Investigation*, the Board had before it the existing rate of 34½ cents per 100 pounds on wheat and 33 cents per 100 pounds on other grains for export from Port Arthur, Fort William, Westfort, and Armstrong. It was urged in argument by Counsel that the rates under the Crowsnest Pass Agreement were *prima facie* fair and reasonable. It was stated that the rate of 11 cents per bushel from Fort William or Armstrong to Quebec, which was asked for, was computed by Counsel for the Quebec Harbour Commissioners as being the equivalent of the Crowsnest rate from Edmonton to Armstrong, less a deduction of 0·7 of 1 cent per bushel. *Evid. Vol. 506, p. 6210. General Rates Investigation, 17 Board's Judgments and Orders, 179.* It was also urged by Counsel that the Crowsnest rates in question had been found to be fair and reasonable and were to be kept in force under the law of 1925. It was further submitted "that the conditions existing from the West to Fort William, Port Arthur, and Armstrong ought to be continued as a fair and reasonable rate down to Quebec and to the ocean ports in New Brunswick and Nova Scotia." *Evid. Vol. 511, pp. 8142, 8143.*

An application was made for leave to appeal from the Judgment of the Board fixing the rate of 18·34 cents per 100 pounds to Quebec. It was contended by the railway that the Board was without jurisdiction to consider the Crowsnest pass basis as bearing upon the reasonableness of the rates from Port William and Armstrong eastward. It was also contended that it was beyond the Board's jurisdiction to take into consideration as a factor affecting rates the expenditure of \$331,000,000 by the Parliament of Canada in constructing or aiding the lines now forming the Canadian National Railways, and that, further, it was beyond the power of the Board to consider the desire of the Government as expressed in the Order in Council to encourage the movement of traffic from Canadian ports.

Mr. Justice Lamont, on the application for leave to appeal, decided that it was within the discretion of the Board to take these matters into consideration.

This phase of the question has, therefore, been settled and the rate of 18·34 cents from Armstrong to Quebec has been found to be one which is not unreasonable or improper, taking into consideration the discretion which is possessed by the Board.

The decision further stated that it was not fairly arguable that the rates fixed by G.O. Order 448 were unfair or unreasonable.

While in the Judgment in the *General Rates Investigation* I was not able to see eye to eye with the majority of the Board in the matters above summarized, these questions have now been settled; the rate of 18·34 cents to Quebec has been fixed; and further discussion on the propriety of this rate would be surplusage.

The question which now arises is the basis of the export rate to the seaports of St. John and Halifax.

In dealing with the 1 cent differential over Quebec, reference has been made to the fact that rates of this kind have existed at earlier dates. It does not appear that there was any accepted 1 cent differential from Montreal and Quebec through the port of Halifax on export grain traffic prior to 1921. For the reasons set out below, however, it does not appear necessary to enter into this phase of the matter in detail. The rate from Fort William to St. John was the Duluth-New York export rate.

While the burden is on the railway to maintain reasonable rates, it may or may not in its discretion meet the competition of short line mileage. *Edmonton Clover Bar Sand Company vs. Grand Trunk Pacific Railway Company*, 17 *Canadian Railway Cas.*, 95; *Complaint Sudbury Board of Trade re rates on coal from Toronto to Sudbury, Ont., Board's File 11479, cited in Canadian Oil Cos. vs. Grand Trunk, Canadian Pacific and Canadian Northern Railway Companies*, 12 *Canadian Railway Cas.*, 350, at p. 355. It may also, to such extent as seems proper to it, meet the competition of water carriers. *Eastern Canadian Preserved Foods Association*, 18 *Board's Judgments and Orders*, p. 22. Whether it shall or shall not meet water competition is in its discretion. *Blind River Board of Trade Case*, 15 *Canadian Railway Cas.*, 146. The railway may, in fixing its rates, meet the competition of other grain-growing territories, and the competitive rate so installed is not a necessary measure of reasonableness of the intermediate rate, such competitive conditions not existing in connection with the intermediate rate. *Kerr vs. Canadian Pacific Railway Company, (Franklin Case)*, 9 *Canadian Railway Cas.*, 207, p. 208.

The powers which are conferred upon the Board are regulative and not managerial. It is not the Board's function, as delegated by Parliament, to make rates to develop business, but to deal with the reasonableness of rates, either on complaint or of its own motion. *British Columbia News Co. vs. Express Traffic Association*, 13 *Canadian Railway Cas.*, 176.

The Board must find the scope of its powers within the Railway Act or such other Act of Parliament as may be found to be pertinent, as, for example, the National Transcontinental legislation. It has been decided that the railways have powers in regard to developing traffic which are not held by the Board; that is to say, the railway, taking the risk of profit or loss, may put in a rate to develop traffic which it would not be justifiable for the Board to install. The railway may put in development rates with a view to increasing traffic, but such rates, I submit, the Board has no power to put in.

As already indicated, the railway may or may not meet rates involving competition of various kinds. It may put in rates to equalize ports. The 1 cent differential which has been referred to as affecting for a limited period of time the traffic to Halifax and Quebec was put in having in mind the existing basis of rates through the North Atlantic ports from the United States.



The mileage from the head of the Lakes, via Canadian National Railways, to Maritime ports and to United States North Atlantic ports is set out in the following statement:—

Port Arthur—Halifax.....	1719 miles
St. John.....	1551 “
Portland.....	1312 “
Boston.....	1311 “
New York.....	1370 “
Philadelphia.....	1390 “
Baltimore, l.....	1370 “

The distance from Armstrong and Fort William to Quebec, Halifax, and St. John are set out in the following statement:—

Armstrong—Quebec.....	958 miles
St. John.....	1436 “
Halifax.....	1604 “
Fort William—Quebec.....	1078 miles
St. John.....	1555 “
Halifax.....	1723 “
St. John, (via Nakina).....	1555 “
Halifax (via Capreol).....	1815 “

It would be unwise to say that any one factor and one alone is to be taken as determinative of the reasonableness of rates; but it seems to me that in dealing with rates and laying out the basis of their application, whatever may be the rights of obligations of the railway, a regulative tribunal is under obligation to give reasonable weight to the question of distance.

The Supreme Court has indicated that (1) the expenditures on the National Transcontinental Railway (2) the avowed intention of encouraging the movement of traffic through Canadian ports (3) the Crowsnest rate basis are all matters which are within the discretion of the Board to consider, and that the Board had not erred in its discretion as to the weight to be given these factors, this being shown by the fact that the rate to Quebec was not found to be unreasonable.

In addition to these factors, the Board had before it as well the cost statistics submitted by the Canadian National. Further, the decision of Mr. Justice Lamont pointed out that an obligation was on the Board of fixing rates which were fair and reasonable “from the standpoint not only of the producer but, also, from the point of view of the railway;” and it was held that it was not fairly arguable that the rates fixed under Order 448 are unfair and unreasonable.

The factors given weight by the majority—the outcome therefrom being found by Mr. Justice Lamont to be within the reasonable exercise of the Board’s discretion—constitute, in my opinion, the measure which, under the decisions, should be applied to the determination of the rate beyond Quebec.

As is pointed out by the Chief Commissioner in his reasons for judgment, “the rate now sought by the petitioners must be brought to the test of being a fair and reasonable one, both to the producer and to the railways, under the provisions of the Railway Act and such other elements as we are entitled to weigh and consider.” While agreeing in this expression of opinion, I am unable to agree in the conclusion developed therefrom. I do not find myself able to accept the position that the 1 cent differential which Saint John and Halifax have had for a limited time over Quebec and Montreal and which, in its origin, is concerned with port equalization, is a proper measure of what the Board is justified in doing in connection with the revision of the rates.

Short line distances from Armstrong to Saint John and Halifax, are 1,436 and 1,604 miles respectively. This distance is, in each case, 19 miles less than the Quebec mileage deducted from the through mileage. The reason for this is that the through movement does not go into Quebec but crosses the bridge a short distance west thereof.



An arbitrary addition of 1 cent to equalize ports, in no way, in my opinion, affords the necessary measure of a reasonable charge for the distance from Quebec to Saint John or to Halifax. Mileage is a factor in the determination of a reasonable basis of rates. In my opinion, more weight must be given by the Board to distance than is obligatory in the case of the railways.

It appears to me that the action taken by the Board in determining upon the 18·34 cent rate and the consideration of the factors entering therein shows that the rate in question established a yardstick, and that the measure of the rate of the distance beyond is to be found in relation to this yardstick.

As pointed out above, Counsel for the Quebec Harbour Commissioners indicated that the rate per bushel, as computed on the Crowsnest basis, worked out at 11·7 cents per bushel and that the 0·7 cent was dropped because of the long haul.

While the terminal charge is constant, the cost of haulage is related to the distance to be traversed. It is commonly stated that as the distance increases the terminal charge becomes a less important factor in the total, with the result that the total rate tapers. But while this is broadly true, it must at the same time be recognized that as one gets up into the longer mileages the terminal factor becomes less and less important until finally its significance may be left out of practical consideration.

If comparisons are made with the Crowsnest basis, it will be found that the lowest ton-mile rate, that of Calgary to Fort William, which, via the Canadian Pacific, has a distance of 1,242 miles, works out at 0·418 cent per ton per mile. From Morley to Fort William, a distance of 1,284 miles, it works out at 0·436 cent per ton mile. Longer mileages are available in connection with the extensions made in applying the Crowsnest basis to the mileage of the Northern Alberta. Here, a mileage grouping of 1425·50 miles gives a per ton mile earning of 0·436 cent. The longest haul from the Northern Alberta is 1,600 miles.

Turning now to the rates from Armstrong. On the former rate of 34½ cents per 100 pounds from Armstrong to Quebec, a distance of 958 miles, the ton-mile rate was 0·720 cents. On the rate of 18·34 cents between the same points, the ton-mile rate is 0·383 cents. From Fort William to Quebec, a distance of 1,078 miles, the ton-mile rate is ·340 of 1 cent.

It is proposed that the rate to Halifax and Saint John shall be 1 cent per 100 pounds over the rate to Quebec, thus giving a rate of 19·34 cents. The distance from Armstrong to Saint John is 1,436 miles, while the ton-mile rate works out at 0·269 cent; that is to say, while the distance to Saint John is 50 per cent greater the ton-mile rate is 70 per cent of that applying on the movement from Armstrong to Quebec. The distance to Halifax from Armstrong is 1,604 miles, with a ton-mile rate of 0·241 of 1 cent.

For the reasons set out, I consider it justifiable to take the ton-mile rate of 0·383 cent worked out on the Armstrong-Quebec distance and to apply this from Armstrong to Saint John, with the result that the rate per 100 pounds to Saint John would be 27½ cents, while to Halifax it would be 30½ cents per 100 pounds.

The findings in connection with the 18·34 cent rate—as I understand them and as I have set them out—appear to me to be controlling and fix the reasonable rates as above set out.  
September 24, 1930.

Commissioner Lawrence concurred.

VIEN, DEPUTY-CHIEF COMMISSIONER:

By their applications, the Halifax Harbour Commissioners and the Transportation Commission of the Maritime Boards of Trade allege that the present rates on grain for export from Fort William, Port Arthur, Armstrong and West Fort William to Halifax and Saint John, are too high and out of line with the rates granted to Quebec under the General Order of the Board No. 448, whereby the rate of 34½ cents per 100 pounds on wheat, and 33 cents per 100 pounds on other grain for export from the same points to Quebec, were disallowed and the Canadian National Railway Company directed to publish, in substitution thereof, a tariff showing a rate of 18·34 cents per 100 pounds, between the said points, on all grain for export, effective September 12, 1927; that, all ports in Canada, capable of being used for the export of grain and flour, have had extended to them the low Crowsnest Pass agreement rates, except the ports of Halifax and Saint John; that, without these rates, it is impossible for the applicants fully to develop the business of their ports; that, by Order in Council, P.C. 886, of June 5, 1925, the Board was directed to establish a railway rate structure which would, under substantially similar circumstances and conditions, be equal in its application to all persons and localities, so as to permit of the freest possible interchange of commodities between the various provinces and territories of the Dominion, and encourage the movement of traffic through Canadian ports; that the National Transcontinental Railway Act (3 Ed. VII, c. 71) prescribes that the through rate on export traffic, from the point of origin to the point of destination, shall at no time be greater via Canadian ports than via United States ports; that the applicants are entitled to the benefit of the same rate as granted to Quebec under the said General Order No. 448, plus the present existing arbitrary differential of one cent per 100 pounds; they therefore apply for an Order disallowing the present rate of 35½ cents per 100 pounds on wheat, and 34 cents per 100 pounds on other grain, and directing that there be published, in substitution thereof, a rate of 19·34 cents per 100 pounds on all grain for export from Port Arthur, Fort William, West Fort William and Armstrong to Saint John, N.B., and Halifax, N.S.

These applications were served on all interested parties.

## II

The Canadian National Millers' Association urged that in the event of these applications being granted, the Order should prescribe a similar reduction on grain products for export; that a rate reduction on wheat without a similar reduction on grain products would unjustly discriminate against the Canadian Milling Industry, by giving an unfair advantage to foreign mills, which already have lower ocean rates and import duties on wheat, as well as cheaper labour and greater mass production.

The Canadian Pacific and Canadian National Railways filed a joint submission. They alleged that the applicants either ignored or misapprehended the present export grain rate adjustment which places the ports of Saint John and Halifax on a footing of absolute equality, so far as rail rates are concerned, with the competing United States North Atlantic ports, viz: Portland, Boston, New York, etc., from which the applicants desire to divert traffic; that the export grain rate to Halifax and Saint John has never been based on the export rate to Quebec, but on the rates to United States North Atlantic ports; that the same conditions and circumstances do not attend the movement of export



grain to Saint John and Halifax, on the one hand, and to Montreal and Quebec on the other; that Quebec and Montreal are summer ports only, and receive by far the greater portion of their grain via the water route, so that the determining factor in the movement to these ports during the season of navigation, is not the railway but the water carrier; that Saint John and Halifax are winter ports as regards which the Canadian rail route is in direct competition with the American rail route, there being no water competitive route open to these ports during the winter season; that the great reservoir of grain, from which all the Atlantic ports draw, is the Georgian Bay ports in Canada and Buffalo in the United States; that the present basis of rate equality, all rail and lake and rail, has been maintained by the Canadian carriers regardless of a much greater mileage, the distance from Buffalo to New York being less than one-half the distance between Georgian Bay ports and Saint John, and one-third of such distance to Halifax; that the export situation cannot be handled in any other manner because no seaport could submit to the maintenance of a preferential rate to other competitive ports, this being particularly true of United States north Atlantic ports, served by American carriers who, in view of their much shorter mileage and greater tonnage, could not fail immediately to meet any rate reduction put into effect by Canadian rail carriers to Halifax and Saint John; that with the existing equality of export rates to Halifax, Saint John, Portland, Boston, New York, etc., the port through which the export grain is shipped, is determined by the export grain business and not by the rail carrier; that, as a matter of fact, the present export rate adjustment does not militate against the freest possible movement of grain through Halifax and Saint John, which, heretofore, have received about as much traffic as their facilities enabled them to handle; that the rate reduction applied for inevitably to be followed by a similar reduction in the United States, would leave the applicants and their competitors in the same relative position, and would simply serve further to reduce rates which are already on a very low basis, and would thus deprive the Canadian carriers of earnings to which they are justly entitled, without giving to Saint John and Halifax any additional traffic; that these applications should therefore be dismissed.

The Boards of Trade of Montreal and Toronto, and the Montreal Grain Exchange concurred in the foregoing conclusions; they submitted further that the Canadian Milling Industry would be seriously jeopardized if the grain were allowed to move to foreign markets at materially lower rates than flour milled in Canada.

### III

Wheat and other grain for export from Western Canada and the north-western United States break bulk, in Canada, at Fort William and Port Arthur and, in the United States, at Duluth and Superior. These points are commonly called "lake ports," and are the main centres on which the grain trade is based.

From these points, the export grain that has not been carried by the all-water route to Montreal or Quebec, either moves all-rail to the seaboard, or by water to the bay ports, at the foot of the lakes (in Canada, Midland, Goderich, Collingwood, Port McNicholl, Port Colbourne, etc., etc.; in the United States, Buffalo, Ogdensburg, Oswego), and thence by rail to the seaboard.

Two sets of rates have been established for these all-rail and lake and rail movements, and, irrespective of mileage, they are on a basis of parity in the two countries, as follows:—



## CARLOAD RATES IN CENTS PER HUNDRED POUNDS ON EXPORT WHEAT

## A.—ALL RAIL

To	From	
	Canadian Head of Lakes	Duluth and Minneapolis, Minn.
	cts.	cts.
Montreal.....	34½	34½
Quebec.....	34½	35½
New York.....	35½	35½
Boston.....	35½	35½
St. John.....	35½	35½
Halifax.....	35½	35½
Quebec (via National Transcontinental Ry. only, on all grain).....	18-34	

## B.—RAIL RATE IN THE LAKE AND RAIL MOVEMENT

(See Note)

To	From	
	Canadian Bay Ports	Buffalo
	cts.	cts.
Montreal.....	14-34	
Quebec.....	14-34	
New York.....		15-17
Boston.....	15-17	15-17
St. John.....	15-17	
Halifax.....	15-17	

NOTE.—To this must be added the rate by water from lake ports to Bay Ports, viz.: approximately 3.6 cents per 100 pounds.

## MILEAGE FROM CANADIAN HEAD OF LAKES, DULUTH AND MINNEAPOLIS TO POINTS NAMED VIA THE ROUTES SPECIFIED

To	From Canadian Head of Lakes		From Duluth		From Minneapolis	
	Route No.	Miles	Route No.	Miles	Route No.	Miles
Montreal.....	1	998	6	1108	6	1128
Quebec.....	2	1022				
	1	1145	6	1255	6	1275
	3	1078				
New York.....	4	1272	7	1382	7	1402
Boston.....	5	1319	8	1430	8	1450
St. John.....	1	1465				
	2	1555	6	1576	6	1596
Halifax.....	2	1723				

## Routes

- 1—Canadian Pacific Railway.
- 2—Canadian National Railways.
- 3—Canadian National Railways and Transcontinental Railway.
- 4—Canadian Pacific Railway and New York Central Railway.
- 5—Canadian Pacific Railway and Boston and Maine Railway.
- 6—Soo Line and Canadian Pacific Railway.
- 7—Soo Line, Canadian Pacific Railway and New York Central Railway.
- 8—Soo Line, Canadian Pacific Railway and Boston and Maine Railway.

	From Bay Ports	From Buffalo
	Miles	Miles
Montreal (Average Distance).....	410	.....
Quebec (Average Distance to Montreal and C.P.R.).....	572	.....
“ (Average Distance to Montreal and C.N.R.).....	582	.....
New York.....	—N.Y.C.	439
Boston (Average).....	716	479
	(Short Line)	
St. John (From Pt. McNichol C.P.R.).....	836	.....
(Average distance to Montreal and C.N.R.).....	1045	.....
Halifax (Average Distance to Montreal and C.N.R.).....	1203	.....

## IV

The applicants admit the equality of rates, all-rail and lake-and-rail, to Saint John and Halifax and to the competitive American North Atlantic ports; they also admit that the movement of grain to Montreal and Quebec is controlled by water competition during the season of navigation; but they urge that when grain leaves the Canadian head of the lakes for Saint John and Halifax, all-rail, it carries a rate of 35·5 cents per 100 pounds, as against a lake-and-rail rate of 18·77 cents per 100 pounds on grain moving from the same points by water to Buffalo and thence by rail to United States Atlantic ports; that this is contrary to the provisions of the Transcontinental Act, 3 Edward VII, chapter 71, and of the agreement entered into pursuant thereto, and more particularly of section 42 thereof, reading in part as follows: “42. . . . The said company accepts the aid on these conditions, and agrees that . . . the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports . . .”; that this 35·5 cents rate is also out of line with the 18·34 cents all-rail rate to Quebec, and with the rates that prevail under the Crowsnest Pass Agreement Act.

## V

It will make for greater clarity if the relevant sections of the Railway Act, defining the powers of this Board as regards rate making, are now quoted. They are, in part, as follows:—

Section 325, ss. 5: “Notwithstanding the provisions of section three of this Act the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of Parliament of Canada, or by any agreement made or entered into pursuant thereto, whether general in application or special and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees, or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the company; provided that, notwithstanding anything in this subsection contained, rates on grain and flour shall, on and from the twenty-seventh day of June, one thousand nine hundred and twenty-five, be governed by the provisions of the agreement made pursuant to chapter five of the Statutes of Canada, 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament.”

Section 3, hereinabove referred to, reads as follows:—

“ 3. Except as in this Act otherwise provided,

“ (b) where the provisions of this Act and of any Special Act passed by the Parliament of Canada relate to the same subject-matter the provision of the Special Act, shall, in so far as is necessary to give effect to such Special Act, be taken to over-ride the provisions of this Act. 1919, c. 68, s. 3.”

It will be observed that:

(a) Since the enactment of section 325, subsection 5 (1925) as interpreted by this Board and by the Supreme Court of Canada (C.L.R. 1930, S.C., p. 288 *et s.*), although the Board can look at and consider statutes and agreements relating to rates, it is not bound by the provisions thereof, except as regards the Crowsnest Pass Agreement Act;

(b) Since the same date, the Crowsnest Pass Agreement Act is no longer in force except as regards rates on grain and flour moving from all points on all lines of railway west of Fort William to Fort William and Port Arthur;

(c) By virtue of section 325, subsection 5, above quoted, the National Transcontinental Railway Act, 3 Edward VII, chapter 71, and the agreement thereunder are no longer legally binding on this Board, in making rates applicable on that or any other line of railway

(d) This Board is untrammelled by any statute or agreement, except as aforesaid; neither the unreasonableness nor the unfairness of the present rates “per se” is alleged, and the issue, therefore, resolves itself into a question of expediency.

## VI

The allegation made by the applicants that all ports in Canada except Saint John and Halifax through which grain passes for export have had extended to them the low Crowsnest Pass Agreement rates is incorrect. The Crowsnest Pass Agreement Act is no longer in force except as above set out, namely on grain and flour from points west of Fort William to Fort William and Port Arthur. The Crowsnest Pass Agreement rates have sometimes been compared with other rates, but this Board never directed that they should apply outside the territory just described.

But even if these rates were to be extended to Halifax and Saint John, they would be much higher than the 19·34 cent rate herein applied for. The mileage via Canadian National Railways from Fort William to Saint John and Halifax are 1,555 and 1,723 miles respectively; from Armstrong to Saint John, 1,436 miles, and to Halifax, 1,604 miles. The average of these mileages is 1,579. Some of the Crowsnest Pass Agreement rates, for similar mileages, to Fort William, are as follows:—

From	Miles	Rate
Faust.....	1436	31 cents
Eaglesham.....	1554	33½ “
Manir.....	1580	34½ “
Woking.....	1603	35 “

From Calgary to Fort William, 1,242 miles, the rate is 26 cents which equals ·418 cents per ton per mile; from Edmonton to Fort William the shortest distance is via the Canadian National Railways, 1,228 miles, which equals ·423 cents per ton per mile. From Morley, Alta., to Fort William, a distance of 1,284 miles, the rate is 28 cents which equals, ·436 cents per ton per mile.



Rates, for the distances in question, at the varying rates per ton per mile above set out, would be as follows:—

*At rate of .418 cents per ton per mile*

	Miles	Rate
	1436	30 cents
	1555	32½ "
	1604	33½ "
	1723	36 "
(Average).....	1579	33 "

*At rate of .423 cents per ton per mile*

	Miles	Rate
	1436	30½ cents
	1555	33 "
	1604	34 "
	1723	36½ "
(Average).....	1579	33½ "

*At rate of .436 cents per ton per mile*

	Miles	Rate
	1436	31 cents
	1554	34 "
	1604	35 "
	1723	37½ "
(Average).....	1579	34½ "

The distance, Calgary to Fort William, 1,242 miles, plus the average of the mileages from Fort William and Armstrong to Saint John and Halifax of 1,579 miles, makes a total of 2,821 miles, and for this latter distance at .418 cents per ton per mile the rate would be 59 cents and at .436 cents per ton per mile the rate would be 61½ cents. It is interesting to note that the rate of 61½ cents is the same as the rate now current from Calgary to Saint John and Halifax, namely, 26 cents Calgary to Fort William, plus 35½ cents from Fort William to Saint John and Halifax, or a total 61½ cents. The rate applied for of 19.34 cents from Armstrong and Fort William to Saint John and Halifax, plus 26 cents from Calgary to Fort William and Armstrong would make a total of 45.34 cents, which is very appreciably less than the Crowsnest rate figured for the through mileage.

## VII

The applicants urge that inasmuch as a rate of 18.34 cents per 100 pounds from Armstrong, Fort William, etc., to Quebec, via the National Transcontinental Railway has been fixed by order of this Board, this rate plus the present arbitrary differential of one cent per 100 pounds should be extended to Halifax and Saint John throughout the year.

In my opinion the applicants fail to appreciate the very different conditions and circumstances attending the movement of export grain to Montreal and Quebec, during the season of navigation, and to Saint John and Halifax, in winter, when there is no competitive water route open. The rates to Montreal and Quebec published by the water carriers are lower than the all-rail or lake-and-rail rates, either to these ports or to competitive American Atlantic ports, and neither the American nor the Canadian rail carriers have deemed it advisable to meet them, inasmuch as the water carriers would further reduce their rates, and the relative position of the rail and water routes would remain unchanged.

The all water route is open to Saint John and Halifax in summer, but it is not used by the Canadian grain exporters. Ocean ships are forced by competition to go up inland waters as much as possible, and in the summer, they go to Montreal and Quebec. No reasonable rail rate adjustment can change these economic conditions.

When the Quebec Harbour Commissioners applied for a reduction of rates via the National Transcontinental Railway from Armstrong to Quebec, the export rates complained of were 34·5 cents per 100 pounds on wheat and 33 cents on other grain, as compared with a lake and rail rate of 19·78 from Fort William via Buffalo to New York, which gave an advantage of 14·72 cents per 100 pounds to the Buffalo New York route.

Figures were filed showing the volume of Canadian wheat exported, during the years 1924-25-26, via Canadian and United States ports, as follows:—

Year	Via Canadian Ports		Via United States Ports	
	Bushels	Percent of Total	Bushels	Percent of Total
1924.....	133,265,795	63·8	75,695,767	36·2
1925.....	101,474,777	47·6	111,909,215	52·4
1926.....	131,372,214	53·9	111,560,641	46·1

It was obvious that the rates in effect were shutting off Canadian rail competition at Fort William, and were forcing traffic into the lake vessels which largely favoured Buffalo because of the return cargo (coal, iron ores, etc.) available for them there but not at Canadian bay ports.

Although the National Transcontinental Railway Act (3, Ed. VII, c 71) was no longer legally binding, in rate making, this Board looked at and considered the agreements entered into, and the \$330,000,000 spent by the country, pursuant thereto; and acting under the directions received from the Governor in Council, under P.C. 886, of June 5, 1925, and P.C. 24, of January 7, 1926, it took such effective action, under the Railway Act, as it deemed necessary to ensure, as far as possible, the routing of Canadian grain through Canadian channels, and it prescribed the rate of 18·34 cents per 100 pounds, which, in enabling traffic to move on the National Transcontinental Railway, was intended to stop the discrimination of lake carriers against Canadian bay ports, and to overcome the handicap created by their preferential rate to Buffalo.

There could be no danger of a rate war between Canadian and American rail carriers; they were already confronted with the lower all-water rate, and under the provisions of General Order 448, the rates on the National Transcontinental were brought down only to the level of the existing lake and rail rates, which had the effect of fixing a maximum which lake carriers could not exceed without losing the traffic;

## VIII

Similar circumstances and conditions are not present herein. There is no water competitive route open to Saint John and Halifax in winter, and the rate structure for both the all-rail and the lake-and-rail movements, is on a basis of absolute parity as between the Canadian and United States channels. In other words, Saint John and Halifax are not at a rate disadvantage, and export grain can and does move freely thereto as shown on Exhibit No. 25, filed herein, as follows:—

## COMPARATIVE STATEMENT OF EXPORTS OF GRAIN FROM NORTH ATLANTIC PORTS

	Bushels		
	Dec. 1—1928 Apr. 27—1929	Dec. 3—1927 Apr. 28—1928	Dec. 4—1926 Apr. 30—1927
Halifax.....	4,995,516	1,757,000	615,000
St. John.....	30,159,809	20,169,000	24,528,000
	35,155,325—33%	21,926,000—26%	25,143,000—22%
Portland.....	3,630,000	2,486,583	5,342,269
Boston.....	4,294,000	3,229,000	2,461,000
New York.....	33,881,025	35,015,417	51,967,850
Philadelphia.....	11,509,000	6,709,000	16,786,000
Baltimore.....	15,573,000	12,382,000	14,171,000
Newport News.....	363,000	10,000	.....
Norfolk.....	2,831,000	1,059,000	848,000
	72,081,025—67%	60,891,000—74%	91,576,119—78%
	107,236,350	82,817,000	116,719,119

The grain exported through Saint John and Halifax is almost exclusively drawn from Canadian bay ports, where the Canadian Government, carriers and shippers have considerably increased their storage and elevator capacity, so as always to be able to meet all requirements; they have done likewise at the seaboard, as shown on Exhibit No. 24, as follows:—

## ELEVATOR CAPACITIES

(Bushels)	
Collingwood.....	2,000,000
Depot Harbour.....	1,600,000
Goderich.....	3,600,000
Owen Sound.....	4,000,000
Midland.....	4,000,000
Midland-Simcoe.....	4,000,000
Tiffin.....	5,500,000
Port McNicholl.....	6,500,000
Sarnia.....	3,000,000
Toronto.....	2,000,000
Port Colborne.....	5,250,000
	41,450,000
Kingston under construction.....	2,000,000
Prescott under construction.....	5,000,000
	7,000,000
St. John West.....	3,250,000
St. John East.....	500,000
Halifax.....	2,000,000
	5,750,000
Montreal.....	15,000,000
Quebec.....	4,000,000
Sorel.....	2,000,000
	21,000,000
Total.....	75,200,000

To this must be added the storage capacity of grain laden lake ships which, at the close of navigation, are moored at proximity of the elevators at bay ports.

Major Kirpatrick, Foreign Freight Traffic Manager, Canadian Pacific Railway, was heard at Ottawa on April 29, 1930, and said without contradiction: "In 1927-28 we handled a very large volume of traffic through Saint John; in fact it taxed the facilities we had at Saint John. There were delays to numerous steamers waiting to get a berth in order to load grain, also package freight. In 1928 and 1929 there was the same thing. I do not know that I can prove this



for you, but in my judgment more grain would have gone to Saint John in 1928, for the winter of 1928-29 than did actually go, by reason of the delays that occurred the previous year." (Record, vol. 559, p. 2027.)

And further: "In my opinion if Halifax had steamers turning round at Halifax, they would be in the same position as Saint John has been for many years. With grain going to Halifax identically as to Saint John, all they have to do is to make Halifax their terminus and 'it' (grain) is there waiting for them." (Ibid., p. 2040.)

These statements, I think, fairly summarize the situation.

I do not intend extensively to refer to the great mass of testimonial and documentary evidence adduced in this case, but it was made abundantly clear, in my opinion, that far from being deprived of their fair share of the Canadian export grain traffic, Saint John and Halifax have received heretofore about as much as and sometimes more than their facilities enabled their port authorities properly to handle, and the volume of traffic passing through these ports has steadily increased during the last few years, which shows that the present rate structure is not a handicap for them.

I cannot conceive, moreover, how the 19.34 cents rate herein applied for could accomplish more than the present lake and rail rate of 18.77 cents. There is only one possible circumstance when any movement could take place thereunder, and it is if the grain stored at Buffalo and Canadian bay ports ran out and it became necessary to move grain all rail from the head of the lakes. But it is obvious that if any serious diversion of grain took place, this condition would immediately be met by similar reductions in the United States and the present relative basis on which grain is exported in the two countries would be re-established.

In this connection it is interesting to note the "dictum" of the Interstate Commerce Commission, in the Rate Structure Investigation, as regards ex-lake rates on grain from Buffalo for export: "We shall make no order in respect of these rates, but the carriers will be left free to establish any lower rates necessary, in their discretion, to enable these routes to compete with other export outlets." (164, I.C.C., p. 619, Specially 691.)

## IX

I have given to these applications my most serious and sympathetic consideration, keeping always in mind the provisions of the National Transcontinental Railway Act, the Crowsnest Agreement Act, and the direction received under the Orders in Council, P.C. 886 and P.C. 24, herein above referred to, and the desirability of taking, under the Railway Act, such effective action as may be deemed necessary, to insure as far as possible the routing of Canadian grain and other products through Canadian channels.

But it would be futile, in my opinion, to attempt to give to the applicants any advantage in addition to the rate parity that they now enjoy. This would immediately and adequately be met by American carriers, no traffic would be diverted to Canadian channels, and the revenue of the carriers on the traffic already moved at very low rates would be seriously depleted.

I believe that the present export situation through Saint John and Halifax is governed by conditions in the grain trade and, possibly, the ocean shipping rather than by any features of the rail rate, and the applicants should direct their efforts to correcting these conditions, if they think that a larger volume of grain should pass through their ports for export.

These applications should therefore be dismissed.

OTTAWA, October 27, 1930.

Commissioner Stoneman concurred.

## ORDER NO. 45638

*In the matter of the application of the Halifax Harbour Commission for an Order directing that the present rate from Fort William, Port Arthur, and Armstrong to Halifax of 21·30 cents per bushel on wheat and 20·40 cents per bushel on other grain be disallowed, and that there be substituted therefor a tariff showing a rate of 11·6 cents per bushel on all grain; and that the present differential of ·6 cents from Montreal and Quebec on grain and flour to Halifax be continued;*

*In the matter of the application of the Transportation Commission of the Maritime Board of Trade for an Order directing the Canadian National Railways to publish an all-rail rate on grain, in carloads, from Armstrong, Ontario, via the National Transcontinental Railway, to Saint John, New Brunswick, West Saint John, New Brunswick, and Halifax, Nova Scotia, of 19·34 cents per 100 pounds, for export;*

*And in the matter of the application of the Canadian National Millers' Association, Montreal, that, in the event of the last mentioned application being granted, the Order be extended to include the same rate on grain products for export.*

File No. 34123.10.2

TUESDAY, the 28th day of October, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Halifax, Nova Scotia, September 16, 1929, in Saint John, New Brunswick, September 19, 1929, and in Ottawa, April 28, 1930, in the presence of counsel for and representatives of the Halifax Harbour Commission, citizens of Halifax, the Transportation Commission of the Maritime Board of Trade, the Canadian National Millers' Association, the Canadian Manufacturers' Association, the Dominion Millers' Association, the Montreal and Toronto Boards of Trade, and the Canadian National and the Canadian Pacific Railway Companies, and what was alleged,—

*The Board Orders:* That the applications be, and they are hereby, refused, (the Chief Commissioner and Commissioner Norris dissenting).

S. J. McLEAN,  
*Assistant Chief Commissioner:*

**The Board of  
Railway Commissioners for Canada**

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**Judgments, Orders, Regulations, and Rulings**

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**Vol. XX**

**Ottawa, November 15, 1930**

**No. 19**

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

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**ORDER No. 45635**

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Elk Point-Easterly Branch from the present end of the operated line at mileage 141·73, Coronado Subdivision of the Applicant Company, to the end of the track at mileage 161·27, a distance of 19·54 miles.*

File No. 11929.64

FRIDAY, the 24th day of October, A.D. 1930,

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Elk Point-Easterly Branch from the present end of the operated line at mileage 141·73, Coronado Subdivision of the applicant company, to the end of the track at mileage 161·27, a distance of 19·54 miles.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45650

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 27th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 6 to Tariff C.R.C. No. 816, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 6 to Tariff C.R.C. No. 816, approved herein, are as follows:—

From	Rate in cents per 100 lbs.	
	L.C.L.	C.L.
Billtown, N.S. . . . .	36	28
Lakeville, N.S. . . . .		
Oyler's Siding, N.S. . . . .		
Woodville, N.S. . . . .		
Grafton, N.S. . . . .		
Somerset, N.S. . . . .	38	29½
Weston, N.S. . . . .		

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45651

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

MONDAY, the 27th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 22 to Tariff C.R.C. No. E-1243, Supplement No. 15 to Tariff C.R.C. No. 1250, Supplement No. 5 to Tariff C.R.C. No. 1251, and Supplement No. 11 to Tariff C.R.C. No. 1257, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3 of the Maritime Freight Rates Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45652

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 27th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published in Supplement No. 5 to Tariff C.R.C. No. 809, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 5 to Tariff C.R.C. No. 809, approved herein, are as follows:—

From	Rate in cents per 100 lbs.	
	L.C.L.	C.L.
Billtown, N.S. . . . .	45	34½
Lakeville, N.S. . . . .		
Oyler's Siding, N.S. . . . .		
Woodville, N.S. . . . .		
Grafton, N.S. . . . .		
Somerset, N.S. . . . .	46½	35½
Weston, N.S. . . . .		

H. A. McKEOWN,  
*Chief Commissioner*

## ORDER No. 45653

*In the matter of the application of the Detroit and Windsor Subway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its vehicular subway from the City of Windsor to the City of Detroit.*

File No. 35943.3

WEDNESDAY, the 29th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its vehicular subway from the city of Windsor, in the province of Ontario, to the city of Detroit, in the state of Michigan.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45659

*In the matter of the application of the Detroit International Bridge Company, hereinafter called the "Applicant Company," for approval of its Tariff C.R.C. No. 3, cancelling C.R.C. No. 2, covering the tolls to be charged in respect of the Ambassador Bridge across the Detroit River between the Town of Sandwich, in the Province of Ontario, and the City of Detroit, in the State of Michigan, on file with the Board under file No. 36795.2.*

WEDNESDAY, the 29th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant company's Tariff C.R.C. No. 3, cancelling C.R.C. No. 2, covering the tolls to be charged in respect of the Ambassador bridge across the Detroit river, between the town of Sandwich, in the province of Ontario, and the city of Detroit, in the state of Michigan, on file with the Board under file No. 36795.2, be, and it is hereby, approved.

H. A. McKEOWN,  
*Chief Commissioner.*

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 ORDER No. 45661

*In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariffs C.R.C. Nos. 1 and 2, covering the tolls to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5.*

WEDNESDAY, the 29th day of October, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant companies tariffs C.R.C. Nos. 1 and 2, covering the tolls to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5, be, and they are hereby, approved.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45662

*In the matter of the application of the Vancouver and Lulu Island Railway Company (Canadian Pacific Railway Company, Lessee), hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of Standard Mileage Freight Tariff C.R.C. No. 2, on file with the Board under file No. 1179.58.*

WEDNESDAY, the 29th day of October, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant company's Standard Mileage Freight Tariff C.R.C. No. 2, on file with the Board under file No. 1179.58, be, and it is hereby, approved; the said tariff, together with reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,  
*Chief Commissioner.*

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 ORDER No. 45675

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

FRIDAY, the 31st day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

*The Board orders:*

1. That the toll published in Supplement No. 33 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 33 to Tariff C.R.C. No. E-4312, approved herein, is \$7.50 per gross ton.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45676

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 31st day of October, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 44 to Tariff C.R.C. No. E-1039 and in Supplement No. 38 to Tariff C.R.C. No. E-1237, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45682

*In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", for leave to reissue, on less than statutory notice, Supplement No. 33 to Tariff C.R.C. No. E-1113, effective October 28.*

File No. 27612.52

TUESDAY, the 4th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicants be, and they are hereby, granted leave to reissue the said Supplement No. 33 to their Tariff C.R.C. No. E-1113, upon one day's notice, to correct clerical errors.

H. A. McKEOWN,  
*Chief Commissioner.*

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**Judgments, Orders, Regulations, and Rulings**

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Vol. XX

Ottawa, December 1, 1930

No. 20

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*Application of the Corporation of the City of Toronto for an Order directing the Canadian Pacific Railway Company to proceed with the construction of a subway at Lansdowne avenue, as provided in Order No. 35037, dated May 9, 1924, and to fix the time for the commencement and completion of said subway, and that a grant of 40 per cent of the cost of the construction of said subway be paid out of the Railway Grade Crossing Fund.*

File No. 32453.8

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Under date of September 30, 1930, the Board was written to by the city solicitor of the city of Toronto as follows:—

“In the matter of the application of the Corporation of the City of Toronto, in the Province of Ontario, hereinafter called the ‘Applicant’ under sections 257 and 259 of the Railway Act, 1919, for an order requiring the Canadian Pacific Railway and the Canadian National Railway Companies to collaborate with the applicant in the preparation of a joint plan for the separation of grades at the crossing of Bloor street, Royce avenue, Weston road, and St. Clair avenue by the said railways, and at the crossings of Wallace avenue and Davenport road by the Canadian National Railway Company, and that the time be fixed by the Board for the submission to it of the plans dealing with grade separation at the said crossings. Files Nos. 32453, 18759, 9437.149, 8673, 9437.94, 132.1, and Case No. 1353.”

It was further set out that—

“The Corporation of the City of Toronto hereby applies to the Board directing the Canadian Pacific and Canadian National Railway Companies or one of them to proceed with the construction of subways at St. Clair avenue and Lansdowne avenue as provided in Order No. 35037 of the Board dated the 9th day of May, 1924, and to fix the time for the commencement and completion of the said subways and for an order



directing that forty per cent of the cost of the construction of said subways shall be paid out of the Railway Grade Crossing Fund, and that the remainder of the cost of constructing the said subways shall be borne in the same way as was the cost of the subways constructed at Bloor street and Royce avenue."

The covering letter stated that copy of the application as well as of the covering letter had been sent to—

E. P. Flintoft, Solicitor for the Canadian Pacific Railway Company.  
 Alistair Fraser, K.C., Solicitor for the Canadian National Railway Company.  
 I. S. Fairty, Solicitor for the Toronto Transportation Commission.  
 Canadian General Electric Company, Limited.  
 The Bell Telephone Company of Canada.  
 Consumers Gas Company of Toronto.  
 The Toronto Hydro-Electric System.  
 The Hydro-Electric Power Commission of Ontario.

Under date of October 3, the Canadian Pacific Railway stated that it had received copy of the formal application in question, and was consenting to the hearing of the matter on short notice.

After correspondence and conference, it was decided that the application should be divided; that Lansdowne avenue should be taken first; and it was accordingly listed for hearing at Ottawa on November 3, 1930. Notice was given to the City of Toronto, the Canadian Pacific Railway Company, the Toronto Transportation Commission, the Bell Telephone Company of Canada, the Consumers' Gas Company of Toronto, the Toronto Hydro-Electric System, the Hydro-Electric Power Commission of Ontario, and the Canadian General Electric Company.

Acknowledgment of receipt of notice was received from the Assistant General Manager of the Consumers' Gas Company of Toronto dated October 28. General counsel for the Bell Telephone Company stated that so far as the application related to the construction of a subway at Lansdowne avenue, the Bell Telephone Company had no plant on Lansdowne avenue at or near the location where the proposed subway was to be constructed and was, consequently, not a party interested or affected by the said application. The General Superintendent of the Hydro-Electric Power Commission replied stating that the said commission was not a party in the application, and it was presumed it had been sent in error. No communication was received from the Toronto Hydro-Electric System.

The application launched by the city is for a subway on Lansdowne avenue which is a main thoroughfare in the city of Toronto. It at present crosses, at grade, the North Toronto Sub-division of the Canadian Pacific Railway and the tracks of the Canadian General Electric. There are two tracks of the Canadian Pacific and three of the Canadian General Electric. It has been recognized in proceedings which were referred to by counsel during the hearing that delay and danger were occasioned at the crossings in question. No such evidence was submitted to the Board at the recent hearing as would justify the conclusion that the crossings were not dangerous.

Counsel for the city of Toronto said that without prejudice to any future applications for contributions the city was prepared in the present instance to ask for an order that the two crossings by the Canadian Pacific and Canadian General Electric be looked after out of the Grade Crossing Fund, and that division of cost be distributed as it was in the case of Bloor Street Subway, provided for under the judgment of the Board, *Board's Judgments and Orders, Vol. 16, p. 213*—Order No. 40367 of February 16, 1928.

Counsel for the Canadian Pacific recognized that conditions at Lansdowne avenue in regard to volume of traffic justified separation of grades.

Counsel for the Canadian General Electric, while stating his company was not at all anxious to go ahead with the work bearing in mind the expense, they appreciated that traffic conditions were onerous at the crossing, and notwithstanding that their plant would be dislocated by the work being done owing to the fact it would mean having offices and factories on both sides of Lansdowne avenue, they still felt that the onerous conditions of traffic at the point in question justified action.

The Toronto Transportation Commission's tracks at the northern approach come within 30 feet of the northerly track of the Canadian General Electric; the southerly track runs to within 100 feet of the tracks of the Canadian Pacific. Construction of the 5 per cent grade involved means that the grade would run out approximately about 330 feet on the north and about 200 feet on the south. The tracks of the Canadian General Electric will come within the area which would be affected by the grade revision necessary in connection with the separation of grades.

The situation is that the tracks running southerly from St. Clair avenue terminate a short distance north of the Canadian Pacific right of way. At the south, the street car tracks commence a few feet away from the southerly limit of the right of way and run south on Lansdowne avenue. There is a loop at the southeast corner of Royce and Lansdowne avenues, and from that point northerly there is a stub track to within a few feet of the railway. Passengers going north on Lansdowne avenue have to transfer to the Toronto Transportation Commission's cars south of the railway and walk over the tracks and entrain on the north side of the tracks, bound northerly. In the opposite direction, a converse situation exists. No additional fare is charged in connection with this movement involving the crossing of the steam railway tracks; there is a transfer. It was testified that the bulk of the passengers arriving at either of these termini of the Toronto Transportation Commission, that is either north or south of the tracks in question, continue their journey across the tracks; that is to say, the existing tracks are in the way of a through movement.

Counsel for the Toronto Transportation Commission while not minimizing the importance of work looking to the further development of safety did not see how it would react to the advantage of the commission he represented. He, rather, took the position that it would react with detriment; at the same time, he recognized that passengers using the facilities of the Transportation Commission might, in respect of the crossings in question, if grades were separated, find the work to be of distinct advantage.

Counsel for the Transportation Commission referred to negotiations which were under way between it and the city, the outcome of which might be of use for other purposes by the Transportation Commission of the moneys which would be involved if it had to make contribution to the grade separation. It further took the position that the burden of cost affecting it should be borne by the city, there being a burden on the city to supply right of way for the cars of the commission.

On consideration, the Toronto Transportation Commission is a party interested or affected and I am of opinion that Order should go on the basis of distribution of cost in the Bloor Street Case above referred to. The details of the distribution will be set out in the accompanying order.

The cost of the work is estimated at \$750,000; the plans are being prepared, and it is hoped that the plans will soon be in such shape as to permit calling for tenders.  
November 6, 1930.

Commissioners Lawrence and Stoneman concurred.



## ORDER No. 45709

*In the matter of the application of the Corporation of the City of Toronto, hereinafter called the "Applicant," for an Order directing the Canadian Pacific Railway Company to proceed with the construction of a subway at Lansdowne avenue, on its North Toronto Subdivision, in accordance with the plan approved under the Order of the Board No. 35037, dated May 9, 1924, and to fix the time for the commencement and completion of the said subway; and for an Order directing that 40 per cent of the cost of constructing the said subway be paid out of "The Railway Grade Crossing Fund," and that the remainder of the cost of constructing the same be borne in the same way as was the cost of the subways constructed at Bloor street and Royce avenue.*

File No. 32453.8

THURSDAY, the 6th day of November, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, November 3, 1930, in the presence of counsel for the applicant, the Canadian Pacific Railway Company, the Toronto Transportation Commission, and the Canadian General Electric Company, Limited, and what was alleged; and upon its appearing that, in addition to the level crossing of the Canadian Pacific Railway across the said street, there is also a level crossing of the track owned and operated by the Canadian General Electric Company, Limited, across the said street, immediately to the north of the said first mentioned crossing; and the Board deeming it expedient for the protection, safety, and convenience of the public that the work hereinafter referred to should be carried out forthwith,—

*The Board orders as follows:*

1. That, for the protection, safety, and convenience of the public the Canadian Pacific Railway Company do proceed with the work of grade separation by means of a subway carrying the highway under its railway and the railway of the Canadian General Electric Company, Limited, at Lansdowne avenue, Toronto, in accordance with the general plan "B" approved under Order No. 35037, dated the 9th day of May, 1924, with such modifications as may be found necessary owing to the fact that the remainder of the work indicated on the said plan is not to be carried out at the present time, and the further fact that it is proposed to remove one of the tracks of the Canadian General Electric Company, Limited, crossing Lansdowne avenue, final plans of the said work including all details, to be approved by an engineer of the Board; and do complete the said work on or before the 31st day of December, 1931.

2. That the said plan "B", approved under Order No. 35037, shall be adhered to in the carrying out of the remainder of the work indicated thereon as and when the same may be undertaken, and any further changes in the railways involved herein and their appurtenances in the vicinity of Lansdowne avenue that may be necessary to make them conform to the said plan "B" (save as such plan may be modified hereunder in respect of the number of tracks of the Canadian General Electric Company, Limited, crossing the said



street) shall be carried out in conjunction with the remainder of the said work indicated on the said plan.

3. That the Bell Telephone Company of Canada, the Hydro-Electric Power Commission of Ontario, the Toronto Electric Commissioners, and the Consumers Gas Company of Toronto make such changes in their wires, pipes, and other plant as may be made necessary by the construction and grade separation ordered hereby, such changes to be made forthwith after notification in writing by the engineer of the Canadian Pacific Railway Company in charge of the work.

4. That the cost of the work hereby directed to be carried out in connection with the separation of grades in respect of the tracks of the Canadian Pacific Railway Company and of the Canadian General Electric Company, Limited, at Lansdowne avenue be borne and paid as follows:—

(a) That forty per cent of the cost of the said work in respect of the tracks of the Canadian Pacific Railway Company be paid out of the "Railway Grade Crossing Fund," such payment not to exceed the sum of one hundred thousand dollars (\$100,000);

(b) That forty per cent of the cost of the said work in respect of the tracks of the Canadian General Electric Company, Limited, be paid out of the "Railway Grade Crossing Fund," such payment not to exceed one hundred thousand dollars (\$100,000);

(c) That the applicant be responsible for the payment of such amount over and above the amounts so to be paid out of the "Railway Grade Crossing Fund," as shall be necessary to make up the full forty per cent of the total cost of the said work hereby directed to be carried out;

(d) That the Bell Telephone Company of Canada, the Hydro-Electric Power Commission of Ontario, the Toronto Electric Commissioners, and the Consumers' Gas Company of Toronto bear and pay the cost of any changes in their wires, pipes, and other plant which they are directed to make under paragraph 3 hereof; such payments of the said Gas Company to be without prejudice to its rights, if any, over against the applicant;

(e) That after deducting the amounts to be paid under clauses (a), (b), and (c) of this paragraph, the remainder of the cost of the said work, including interest at the rate of five per centum per annum from a date sixty days after the submission of the account of any expenditure to the date of payment, be borne and paid as follows:—

- (1) Ten per cent by the Toronto Transportation Commission;
- (2) Forty-five per cent by the applicant;
- (3) Forty-five per cent by the Canadian Pacific Railway Company and the Canadian General Electric Company, Limited, in such proportions as they may agree upon;

(f) That in the event of any disagreement between the parties herein mentioned as to the details of the apportionment of distribution of cost or as to any of the payments by this order directed or otherwise incidental thereto or arising therefrom, such matter may be referred to the Board, on proper notice, for adjustment or further direction.

S. J. McLEAN,  
Assistant Chief Commissioner.

*Application of the Town of Arnprior, Ont., for an Order directing that an interchange track be constructed by the Canadian Pacific Railway Company and the Canadian National Railways at Arnprior.*

File No. 6713.52

ORAL JUDGMENT DELIVERED BY THE CHIEF COMMISSIONER AT THE CLOSE OF THE HEARING AT OTTAWA ON NOVEMBER 13, 1930

The CHIEF COMMISSIONER: I think we have heard everything that can usefully be said upon this question, and there is no reason why the Board should not at once express its view upon the principal matter at issue here, which is, whether the interchange should be made.

Between one railway and another, the Board is absolutely neutral as to which company gets the bulk of traffic, and will be careful to guide itself so that there can be no suggestion that one railway is being favoured at the expense of another. No matter how much predominance there might be in the volume of traffic carried by any particular railway in any particular district, if the public is satisfied with it, and unless there is interjected into that circumstance something detrimental to the public interest, the Board keeps its hands off and is indifferent as to who gets the business. But there may some times in the development of towns wherein a railway which is senior has been followed by a junior road, and difficulties in marketing the output of the industries lying along that junior road present themselves because of the lack of interchange between the two railways. And when they do present themselves, and when it is apparent that it is in the interests of the public, that is to say in the interests of the business of the country and the development of the commerce of the company, that there be an interchange, and that the markets should be available as easily and as cheaply for one industry as for another, and facts are shown leading to the conclusion that the interchange should be made, the Board must deal with the situation. We think that has been shown in the present case. We think that the facts which have been laid before us by His Worship the Mayor and by other witnesses who have described the situation at Arnprior are such as to lead to the conclusion that it is in the public interest that there be an interchange track at Arnprior.

Specific instances were given by Mr. Gillies, a prominent manufacturer there, in which it was shown that he was excluded from certain markets because there is no interchange.

His Worship has detailed the likelihood or prospects of getting other industries to locate, providing an interchange between the two railways is effected.

From the evidence laid before us we have come to the conclusion that on the question of whether there should be an interchange our decision should be in the affirmative, and an order will accordingly go to that effect.

As to the question of costs, we are not prepared, at the moment, to express a conclusive opinion. We will carefully scrutinize all the cases which have been cited, and the instances which have been laid before us, and our judgment as to what the apportionment of the costs should be will be announced a little later. But, in order that there may be no uncertainty in the minds of those who have attended before the Board to-day, we have thought well to announce our decision that the application for interchange be granted.

The plan filed by Mr. Fraser as exhibit No. 3 we think presents the best track layout for the interchange. We think also that the Canadian National Railways should be authorized to construct the work.

That disposes of all the questions involved, except the question of costs, as to which, as I have said, we will give further consideration. It may be that one of my other brothers will wish to add something.

The DEPUTY CHIEF: I agree in what the Chief Commissioner has just said.

Mr. COMMISSIONER LAWRENCE: I concur.



## ORDER No. 45693

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic a portion of its second track (double track) between mileages 78·9 and 86·00 Cartier Subdivision, in the Province of Ontario.*

File No. 36883.3

MONDAY, the 3rd day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic a portion of its second track (double track) between mileages 78·9 and 86·00 Cartier Subdivision, in the province of Ontario.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45696

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

WEDNESDAY, the 5th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the toll published in item 102 of Supplement No. 43 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the toll which, but for the said Act, would have been effective in lieu of that published in the said item 102 of Supplement No. 43 to Tariff C.R.C. No. 813, is 8½ cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45697

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 5th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 9 to Tariff C.R.C. No. E-1226.  
 Supplement 11 to Tariff C.R.C. No. E-1241.  
 Supplement 21 to Tariff C.R.C. No. E-1302.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45698

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

WEDNESDAY, the 5th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item 90-C of Supplement No. 24 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 90-C of Supplement No. 24 to Tariff C.R.C. No. 817, approved herein, are as follows:—

	Rates in cents per hundred pounds.
Not exceeding 20 miles.. . . . .	4
Over 20 and not over 50 miles.. . . . .	5
Over 50 and not over 75 miles.. . . . .	6½
Over 75 and not over 100 miles.. . . . .	7
Over 100 and not over 125 miles.. . . . .	7½
Over 125 and not over 150 miles.. . . . .	8

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45699

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

WEDNESDAY, the 5th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*The Board orders:

1. That the tolls published in item 3 of Supplement No. 26 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 3 of Supplement No. 26 to Tariff C.R.C. No. 783, approved herein, are as follows:—

From Halifax and Truro, N.S., To	Rates in cents per 6 hundred pounds.
Weymouth, N.S. . . . .	23½
Hectanooga, N.S. . . . .	24½
Hebron, N.S. . . . .	25½

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45700

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

WEDNESDAY, the 5th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*The Board orders:

1. That the toll published in item 88 of Supplement No. 44 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 88 of Supplement No. 44 to Tariff C.R.C. No. 813, approved herein, is 28 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45705

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic that portion of its Sturgis-Peesane Branch from the junction with the Tisdale Subdivision of the Canadian Northern Railway Company at Crooked River, Saskatchewan, southeasterly for a distance of 29.0 miles; also the east leg of the wye at the said junction, 0.24 of a mile in length.*

File No. 35964.14

WEDNESDAY, the 5th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its Sturgis-Peesane Branch from the junction with the Tisdale Subdivision of the Canadian Northern Railway Company at Crooked River, in the province of Saskatchewan, southeasterly for a distance of 29.0 miles; also the east leg of the wye at the said junction, 0.24 of a mile in length.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45727

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.2

SATURDAY, the 8th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 7 to tariff C.R.C. No. E-1231.

Supplement 36 to tariff C.R.C. No. E-1235.

Supplement 4 to tariff C.R.C. No. E-1504.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45763

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

THURSDAY, the 13th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*C. LAWRENCE, *Commissioner.**The Board orders:*

1. That the tolls published in items 8A and 9 of Supplement No. 28 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said items 8A and 9 of Supplement No. 28 to Tariff C.R.C. No. 783, approved herein, are as follows:—

	Rates in cents per hundred pounds
Item 8A Halifax to Middleton, N.S. . . . .	22
Halifax to Yarmouth, N.S. . . . .	16½
Item 9 <i>To Middleton, N.S.—</i>	
Less than carloads. . . . .	25
Carloads, minimum 30,000 pounds. . . . .	21½
Carloads, minimum 50,000 pounds. . . . .	19½
<i>To Bridgetown, N.S.—</i>	
Less than carloads. . . . .	22½
Carloads, minimum 30,000 pounds. . . . .	20½
Carloads, minimum 50,000 pounds. . . . .	19½

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45764

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

THURSDAY, the 13th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*C. LAWRENCE, *Commissioner.**The Board orders:*

1. That the tolls published in item 115 of Supplement No. 25 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 115 of Supplement No. 25 to Tariff C.R.C. No. 817, approved herein, is 13½ cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45777

*In the matter of the application of the British Columbia Electric Railway Company, Limited, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of its Standard Freight Mileage Tariff C.R.C. No. 313, on file with the Board under file No. 21404.8.*

FRIDAY, the 14th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant company's Standard Freight Mileage Tariff C.R.C. No. 313, on file with the Board under file No. 21404.8, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45778

*In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of their tariff C.R.C. No. 3, covering the commutation fares of seven-day limit to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.*

SATURDAY, the 15th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant companies' tariff C.R.C. No. 3, covering commutation fares of seven-day limit to be charged in respect of the Detroit tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45780

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

SATURDAY, the 15th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.**The Board orders:*

1. That the tolls published in items 147-C and 176 of Supplement No. 45 to Tariff C.R.C. No. 813, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said items 147-C and 176 of Supplement No. 45 to Tariff C.R.C. No. 813, approved herein, are as follows:—

Item	Rates in cents per hundred pounds
Item 147-C	
Halifax, N.S., to Yarmouth, N.S. . . . .	15
Item 176	
Weymouth, N.S., to Truro, N.S. . . . .	13½

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45771

*In the matter of the Order of the Board No. 45634, dated October 25, 1930, providing that, subject to the grain traffic having priority, the coal movements during the year 1930 shall be from the 25th day of October to end December 1, 1930, and that a rate of \$6.75 per ton on coal movements provided for under Orders in Council P.C. 439, dated March 16, 1928, and P.C. 1268, dated June 5, 1930, be established to be effective from the 25th day of October to the 1st day of December, 1930, both inclusive; And in the matter of the application for an Order extending the time within which the said coal movement may be performed.*

File No. 27425.90

MONDAY, the 17th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed,—

*The Board orders:* That the period of coal movements during the year 1930-1931, subject to the grain traffic having priority, as provided for under the said Order No. 45634, dated October 25, 1930, be, and it is hereby, fixed to commence on the 1st day of December, 1930, and to end on the 31st day of July, 1931, both inclusive.

H. A. McKEOWN,  
*Chief Commissioner.*



ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
BOARD OF RAILWAY COMMISSIONERS, FOR  
MONTH OF AUGUST, 1930.

Railway accidents .....237 involving 28 persons killed and 227 injured  
Railway accidents at highway crossings.... 39 involving 15 persons killed and 54 injured

	Killed	Injured
Passengers . . . . .	1	34
Employees.. . . .	6	155
Others.. . . .	36	92
	43	281

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF PRINCE EDWARD ISLAND

Accidents

1 Automobile—Excessive speed of auto. PEI. 5805.

PROVINCE OF NOVA SCOTIA

3 Automobile—Licence Nos. N.S. 53-066; N.S. C. 15-731; N.S. C. 16-045.

PROVINCE OF NEW BRUNSWICK

1 Automobile—Attempted to beat train; licence N.B. 11-424.

1 Automobile—Licence N.B. X-471.

PROVINCE OF QUEBEC

8 Automobile—Failed to stop for crossing; Que. licences 116-514; 100-589; 80-859; 81-970; L-2146; F-5-926; L. 3-160; Maine licence 735.

1 Automobile—Ran into side of train; Quebec licence X-1-852.

1 Automobile—Quebec licence H-31-411.

PROVINCE OF ONTARIO

3 Automobile—Ran into side of train: Ontario licences KZ-610; K6795; PK-201.

2 Automobile—Stalled on crossing: Ont. licence AL-445; Mass. 197-555.

2 Automobile—Excessive speed of auto: Ont. licences EU-429; 45-539C.

6 Automobile—Ontario licences CW-876; FN-59; P-7474; 47115; 37-351C; H-325.

2 Automobile—Licences not given.

1 Pedestrian. \*

PROVINCE OF MANITOBA

3 Automobile—Man. licences: 103-722; 95-664; 112-879.

PROVINCE OF SASKATCHEWAN

1 Automobile—Ran into side of train; Sask. licence 10-984.

2 Automobile—Sask licences: T-11-504; 79-615.

PROVINCE OF BRITISH COLUMBIA

1 Automobile—B.C. licence 35-840.

Of the 39 accidents at highway crossings, 9 occurred at protected crossings, and 30 at unprotected crossings. Thirty-two of the accidents occurred during daylight hours and 7 during the night.

OTTAWA, November 11, 1930.



The Board of  
**Railway Commissioners for Canada**

Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, December 15, 1930

No. 21

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*In the matter of the application of the Wm. Wrigley Jr. Company, Limited, hereinafter called the "Applicant Company," for an Order directing that the applicant company be given the benefit of the Buffalo rate, retroactive to the original effective date of such rate, shown in Transcontinental Freight Bureau Tariff C.R.C. No. 541, Item 2175 (now superseded by Tariff C.R.C. No. 549), on chewing gum and confectionery, in carloads, from Toronto, Ontario, to British Columbia Coast points; and alleging unjust discrimination in favour of the longer haulage from Buffalo via the Canadian route, as compared with Toronto, from which point a higher rate is published as shown in Agent G. C. Ransom's Tariff C.R.C. No. 256 (now superseded by Tariff C.R.C. No. 466).*

File No. 37103

ORAL JUDGMENT DELIVERED BY ASSISTANT CHIEF COMMISSIONER McLEAN AT THE CLOSE OF THE HEARING AT TORONTO ON NOVEMBER 18, 1930

THE ASSISTANT CHIEF:

The correspondence that is on file was carefully considered before this hearing, and now we have had the advantage of hearing the submissions on both sides.

As the matter presents itself to me the applicant is fearing a conjectural situation. It is admitted that at present there is no competition from any chewing gum manufactured at Buffalo going to the Vancouver market. It is testified by the representative of the railways that rates from this territory in question to the coast are built up on recognition of the facts, taking competition into consideration. It is intimated by him that if and when competition of the nature feared by the applicant arises the railroads are prepared to consider competitive rates on whatever basis is necessary to protect the Canadian traffic.

Upon consideration of what is put forward it seems to us that the applicant is not concerned about actual traffic and rates thereon, but with the fear of what might happen if and when conditions changed. Existing conditions do not seem to us to justify the action asked by the applicant. If and when conditions appear to show any real danger, the matter can be dealt with.

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ORDER No. 45804

*In the matter of the application of the Wm. Wrigley Jr. Company, Limited, hereinafter called the "Applicant Company," for an Order directing that the applicant company be given the benefit of the Buffalo rate, retro-active to the original effective date of such rate, shown in Transcontinental Freight Bureau Tariff C.R.C. No. 541, Item 2175 (now superseded by Tariff C.R.C. No. 549), on chewing gum and confectionery, in carloads, from Toronto, Ontario, to British Columbia Coast points; and alleging unjust discrimination in favour of the longer haulage from Buffalo via the Canadian route, as compared with Toronto, from which point a higher rate is published as shown in Agent G. C. Ransom's Tariff C.R.C. No. 256 (now superseded by Tariff C.R.C. No. 466).*

File No. 37103

FRIDAY, the 21st day of November, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, November 18, 1930, in the presence of representatives of the applicant company and the Canadian Freight Association, and what was alleged.—

*The Board orders:* That the application be, and it is hereby, refused.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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*Application of the Canadian National Railways for a ruling of the Board that the interest charges are properly payable by the Michigan Central Railroad Company in connection with the closing of Bender Street across the Michigan Central Railroad tracks and the diversion of traffic along New Street, Niagara Falls, Ont., under Order of the Board No. 38768, dated February 16, 1927.*

File No. 9437.574

ORAL JUDGMENT DELIVERED BY ASSISTANT CHIEF COMMISSIONER McLEAN AT THE CLOSE OF THE HEARING AT TORONTO ON NOVEMBER 18, 1930

THE ASSISTANT CHIEF:

This is the outcome of the payment by the applicant company of the sum of \$28,473.81 which the Michigan Central obligated itself to pay in connection with the work specified. The question is as to interest. It is stated that the work was completed about July, 1927. Then the Niagara, St. Catharines and



Toronto billed the Michigan Central for interest on the sum expended from January 1, 1928. We understand that there is no question as to the sum which it is obligated to pay; it is simply a question of the date from which interest should run. Roughly speaking, the interest charged by the Niagara, St. Catharines and Toronto is for three years, while the Michigan Central concede it for one year.

It seems to us that the interest should follow the capital charge as of its date, and that an order should go as asked by the Niagara, St. Catharines and Toronto Railroad.

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ORDER No. 45805

*In the matter of the Order of the Board No. 38768, dated February 16, 1927, authorizing the Niagara, St. Catharines and Toronto Railway Company to divert Bender Avenue from a point near Falls Avenue, under the Michigan Central Railroad, by way of New Street, to a connection with Victoria Avenue, near Cookman Avenue, in the City of Niagara Falls; the existing crossing of Bender Avenue by the Michigan Central Railroad to be closed within the limits of the railway right of way; to cross the Michigan Central Railroad and Palmer Avenue by means of an undercrossing; and to cross at grade Alma Street, Bender Avenue, Inskip Avenue (to be closed), Cookman Avenue (to be closed); apportioning the cost of the said work; and authorizing the city to extend Falls Avenue from the northeast in a straight line across the proposed tracks of the Niagara, St. Catharines and Toronto Railway Company, to connect with the new street to the park;*

*And in the matter of the application of the Canadian National Railways for a ruling of the Board that interest charges are properly payable by the Michigan Central Railroad Company in connection with the closing of Bender Street across the Michigan Central Railroad and the diversion of traffic along New Street aforesaid.*

File No. 9437.574

THURSDAY, the 20th day of November, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, November 18, 1930, in the presence of counsel for the Canadian National Railways and the Michigan Central Railroad Company, and what was alleged,—

*The Board orders:* That the Michigan Central Railroad Company be, and it is hereby, directed to pay interest charges to the Canadian National Railways in connection with the said closing of Bender street and the diversion of traffic along New street, in the city of Niagara Falls, as provided under the said Order No. 38768, dated February 16, 1927; the interest charge to follow the capital charge as of its date.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45794

*In the matter of the application of the Vancouver and Lulu Island Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of By-law authorizing the Freight Traffic Manager and the Chief of the Tariff Bureau from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight traffic upon the railways of the Applicant Company; and the Passenger Traffic Manager and the General Passenger Agent to prepare and issue tariffs of the tolls to be charged for the carriage of passenger traffic upon the said railways, on file with the Board under file No. 37669.*

TUESDAY, the 18th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said by-law of the applicant company, on file with the Board under file No. 37669, be, and it is hereby, approved.

H. A. McKEOWN,  
*Chief Commissioner.*

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 ORDER No. 45791

*In the matter of the application of the Burrard Inlet Tunnel and Bridge Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of By-law, passed by the Board of Directors of the Applicant Company, authorizing Percy Ward to prepare and issue tariffs of the tolls to be charged in respect of the railway and bridge owned and/or operated by the Applicant Company, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid.*

File No. 15732.8

FRIDAY, the 21st day of November, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said by-law, on file with the Board under file No. 15732.8, be, and it is hereby, approved.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45811

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

SATURDAY, the 22nd day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 16 to Tariff C.R.C. No. E-1250, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

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 ORDER No. 45825

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for leave to open for the carriage of traffic its St. Walburg-Bonnyville Branch from the connection of the said branch with the Bonnyville Subdivision of the Applicant Company at Bonnyville, Alberta (at mileage 37·15), easterly for a distance of 20·4 miles.*

File No. 37449.6

TUESDAY, the 25th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby authorized to open for the carriage of traffic its St. Walburg-Bonnyville Branch from the connection of the said branch with the applicant company's Bonnyville Subdivision at Bonnyville, Alberta (at mileage 37·15), easterly for a distance of 20·4 miles.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45846

*In the matter of the General Order of the Board No. 448, dated August 26, 1927; and tariffs published by the Canadian National Railways on grain and flour, C.R.C. No. W-545 and C.R.C. No. W-546;*

*And in the matter of the application of the Government of the Province of Alberta for an Order directing that the Canadian National Railways do forthwith publish, file, and put into effect tariffs on grain and flour to Fort William, Westport, and Armstrong, Ontario, and to Vancouver, British Columbia.*

File No. 34123.74

TUESDAY, the 25th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner*S. J. McLEAN, *Assistant Chief Commissioner.*THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading the said application and the statements and the correspondence therein referred to, together with the reply to the said application of the Canadian National Railways, dated October 20, 1930,—

*The Board orders:* That the application be, and it is hereby, refused.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45835

*In the matter of the application of the Board of Trade of Prince Albert, Saskatchewan, hereinafter called the "Applicant," under Section 253 of the Railway Act, for an Order requiring the construction of interchange tracks between the Canadian Pacific and the Canadian National Railway Companies.*

File No. 6713.234

WEDNESDAY, the 26th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading the submissions filed in support of the application and on behalf of Burns & Company, Limited; McDiarmid Lumber Company, Limited; Western Grocers Limited; National Fruit Company, Limited; The Northern Cartage and Contracting Company, Limited; The Codville Company, Limited; Prince Albert Storage Company; George Milne; Saskatchewan Co-operative Live Stock Producers, Limited; British American Oil Company, Limited; The One Northern Milling Company, Limited; Prince Albert Breweries Limited; Gilmore Ice Company; Manville Hardware Company, Limited; North Star Lumber Company, Limited; the city of Prince Albert, and the Department of Railways, Labour and Industry of the province of Saskatchewan; the Canadian Pacific Railway Company consenting,—

*The Board orders:* That the Canadian Pacific Railway Company be, and it is hereby, directed, within sixty days from the date of this order, to construct interchange tracks between its railway and the tracks of the Canadian National Railways at Prince Albert, in the province of Saskatchewan; plans of the proposed transfer tracks to be filed for the approval of an engineer of the Board, within thirty days of the date of this order; the question of the cost of construction to be reserved for further consideration by the Board.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 45842

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

SATURDAY, the 29th day of November, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 3 to Tariff C.R.C. No. E-1229.  
Supplement 13 to Tariff C.R.C. No. E-1236.  
Supplement 22 to Tariff C.R.C. No. E-1302.  
Tariff C.R.C. No. E-1671.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 45862

*In the matter of the application of the British Columbia Electric Railway Company, Limited, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of its Standard Freight Mileage Tariff C.R.C. No. 313, on file with the Board under file No. 21404.8; And in the matter of the Order of the Board No. 45777, dated November 14, 1930, made herein.*

File No. 21404.8

MONDAY, the 1st day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the applicant company's Standard Freight Mileage Tariff C.R.C. No. 313, cancelling C.R.C. No. 221, in so far as the same has

application to the Vancouver, Fraser Valley and Southern Railway Company, be, and it is hereby, approved; the said tariff, together with reference to this order, to be published in at least two consecutive issues of the *Canada Gazette*.

2. That Order No. 45777, dated November 14, 1930, made herein, be, and it is hereby, rescinded.

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 45863

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

MONDAY, the 1st day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 4 to Tariff C.R.C. No. E-1227, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 45893

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.15

FRIDAY, the 5th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll on bituminous coal from Chipman to Minto, New Brunswick, published in Supplement No. 6 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said Supplement No. 6 to Tariff C.R.C. No. 160, approved herein, is 70 cents per ton of 2,000 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*



ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF  
SEPTEMBER, 1930

Railway accidents .....182, involving 31 persons killed and 183 injured.  
Railway accidents at highway crossings.... 45, involving 19 persons killed and 70 injured.

	Killed	Injured
Passengers.. . . . .	2	24
Employees.. . . . .	7	139
Others.. . . . .	41	90
	50	253

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF PRINCE EDWARD ISLAND

Accidents

1 Automobile—Licence P.E.I. 5229.

PROVINCE OF NOVA SCOTIA

- 1 Automobile—Ran into side of train: licence N.S. 71365.
- 1 Automobile—Excessive speed of auto: licence Mass. 628-880.
- 1 Automobile—Licence N.S. 75074.

PROVINCE OF NEW BRUNSWICK

- 1 Automobile—Ran into side of train; licence N.B. 6003.
- 1 Automobile—Stalled on crossing; licence N.B. 17315.
- 3 Automobile—Excessive speed of auto; licences N.B. 18914; N.B. 22685; N.B. X-3121.

PROVINCE OF QUEBEC

- 4 Automobile—Ran into side of train: Que. licences 125-831; F-105; T-6162; T-1916.
- 5 Automobile—Failed to stop for crossing: Que. licences F-11024; 264-360; 114-876; Mich. 191271; Mass. 180-662.
- 1 Wagon—Horse became frightened, ran into side of train.
- 1 Pedestrian—Passed under lowered gates, walked in front of train.
- 1 Pedestrian—Victim deaf and sight impaired.
- 1 Automobile—Excessive speed of auto: Que. licence 78370.

PROVINCE OF ONTARIO

- 3 Automobile—Ran into side of train: Ont. licences JD-35; 63-930C; N.Y. licence 5B-6605.
- 1 Excessive speed of auto, driver's hearing impaired: N.Y. licence 1-8272.
- 3 Automobile—Ontario licences LH-856; AU-843; DL-779.
- 1 Pedestrian—Hearing impaired.
- 1 Pedestrian—Child sitting on track, struck by train.
- 1 Pedestrian.

PROVINCE OF MANITOBA

- 1 Automobile—Ran into side of train: Man. licence 51645.
- 1 Automobile—Driver's vision obscured by dirty wind-shield: Man. licence 112-510.

PROVINCE OF SASKATCHEWAN

- 1 Automobile—Auto driver's hearing impaired: Sask. licence 86227.
- 1 Automobile—Sask licence T-14168.

PROVINCE OF ALBERTA

- 2 Automobile—Stalled on crossing: Alta. licence 46881; Sask. licence 36-978.
- 3 Automobile—Alta. licences 58574; 2810; 4287.

PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—Ran into side of train: B.C. licence 924-70.
- 3 Automobile—B.C. licences 10-014; 58930; 62510.

Of the forty-five accidents at highway crossings, three occurred at protected crossings and forty-two at unprotected crossings. Twenty-five of the accidents occurred during daylight hours and twenty during the night hours.

OTTAWA, November 25, 1930.



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# The Board of Railway Commissioners for Canada

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## Judgments, Orders, Regulations, and Rulings

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Vol. XX

Ottawa, January 1, 1931

No. 22

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

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*Application of the City of Swift Current, under sections 256, 257 and 261 of the Railway Act, for an Order directing the Canadian Pacific Railway Company to provide and construct a suitable level crossing for pedestrians, or in the alternative an overhead crossing at the intersection of the eastern boundary of section 25-15-14 with the northerly limit of land forming the station grounds of the Canadian Pacific Railway at Swift Current, Sask., as shown on plan, thence southerly 381 feet, more or less, to the southeast corner of said section 25.*

File No. 20483

### REPORT TO THE BOARD, AFTER HEARING, BY COMMISSIONER STONEMAN

While the Deputy Chief Commissioner and I were in Western Canada holding sittings of the Board and were in the City of Victoria on March 22, 1930, a telegram was received from Mr. D. Seath, City Clerk of Swift Current, Sask., requesting the Board to stop-off in Swift Current on its way east, to hear the parties in connection with the proposed footbridge over the Canadian Pacific Railway Company's tracks, at the point designated, and near the railway company's station grounds, in the said city of Swift Current.

This matter was considered, and it was finally decided, under the provisions of section 12 (b) of the Railway Act, that I should proceed to Swift Current to hear the parties in evidence. I did so on March 31 last, and now beg to submit my report to the Board:—

At the sitting which I held on the date above mentioned, there appeared before me representatives of the interested parties, which included Mr. J. G. Laycock, Mayor; Mr. S. Davidner, Alderman; and Mr. George F. Roth, City Solicitor; all representing the city of Swift Current; Mr. L. J. Reycraft, K.C., Mr. H. J. Main, Superintendent Canadian Pacific Railway, and Mr. Campbell, Engineer, representing the Canadian Pacific Railway Company; Mr. A. W. Weaver, Secretary, and Mr. H. W. Wells, representing the Southside Ratepayers' Association of Swift Current.



This application is not a new one in the history of the Board, and I think, in order to clarify the facts leading up to the present hearing, I will briefly review the earlier history of this matter.

The records show that the application in this matter first came to the attention of the Board in July, 1912, when the residents of North and South Swift Current petitioned the Board for some means of crossing the tracks and yards of the Canadian Pacific Railway in that city. Some correspondence followed the filing of this petition, but apparently nothing was done at that time. The matter became active again in October, 1923, when the city of Swift Current made a formal application to the Board, wherein they requested the Canadian Pacific Railway Company to provide and construct a suitable level crossing for pedestrians, or in the alternative an overhead crossing, at the point designated on the plan filed with the application on that date.

The matter came up for hearing, at Regina, on December 8, 1923, before the then Chief Commissioner, the late Hon. F. B. Carvell, and Commissioners Lawrence and Oliver, when judgment was reserved, pending the filing of submissions by the Canadian Pacific Railway as to what portion of the cost the Railway Company would be willing to contribute towards the overhead structure, if ordered to be built.

Judgment of the late Hon. F. B. Carvell, concurred in by Commissioners Lawrence and Oliver, issued February 1, 1924, and Order No. 34745 issued February 9, 1924, dismissing the application. The Hon. Mr. Carvell, in the concluding paragraph of his judgment, however, had the following to say:—

“Our Engineer estimates that an overhead foot bridge could be constructed for \$7,000, and if this could be accomplished it would solve the situation, and not interfere with the operation of the railway. Since coming to Ottawa I have had considerable correspondence with the railway company about it; as well as some personal interviews, and we are now in receipt of a letter from the Assistant General Solicitor of that railway company, in which they agree, merely as a matter of goodwill, to contribute \$2,500 towards such structure. I can only hope that the city will be able to take advantage of this offer and go on with the scheme. The application, however, must be dismissed.”

Mr. G. F. Roth, solicitor for the city of Swift Current, wrote the Board, under date February 25, 1924, as follows:—

“We note from the judgment of the Chief Commissioner that the Canadian Pacific Railway Company by their assistant general solicitor, has agreed to contribute \$2,500 towards the construction of an overhead bridge, and as the city feels disposed to take advantage of this offer, but it may be some little time before we are in a position to undertake the work, we would like to know whether the offer was made as a continuing offer, or whether it was for immediate acceptance and immediate completion of the work.”

In reply to the foregoing, the Board on February 29, 1924, wrote the solicitors for the city as follows:—

“The Board is of the opinion that the railway company’s contribution will be carried out at any time it may be required by the city.”

I find in the records that on February 18, 1927, the City Clerk of Swift Current forwarded to the Hon. Mr. Dunning, the then Minister of Railways, as well as to the Department of the Interior, copy of a resolution passed by the City Council, wherein they petitioned for assistance in securing a suitable crossing, by bridge or subway, over the Canadian Pacific Railway tracks in the said city of Swift Current, and for assistance in financing same. Hon. Mr. Dunning, on February 25, 1927, brought the matter to the attention of the Board and asked that the request of the city be given consideration.

On December 24, 1929, Mr. Bothwell, solicitor for the city of Swift Current, wrote the Board, referring it to order of the Board No. 34747 of February 9, 1924, as well as to the Judgment of the late Chief Commissioner Carvell of February 1, 1924, and drawing attention to the Board's letter of February 29, 1924, in which he was advised that—

“the Board is of opinion that the railway companys contribution will be carried out at any time it may be required by the city.”

Mr. Bothwell advised the Board, in this communication, that the city had recently been in communication with Canadian Pacific Railway Company, and it is now the city's intention to build an overhead foot-bridge, if it is possible for them to finance the same. The council is hopeful that it may be able to secure some contribution from the Grade Crossing Fund, and at a meeting of December 16, 1929, they passed the following resolution:—

“That whereas it has become necessary to erect a foot-bridge over the Canadian Pacific Railway yards at or near the original surveyed road allowance we do hereby petition the Dominion Government for an allowance out of the Dominion Grade Crossing Fund to assist in the erection of said foot-bridge and that a copy of the resolution be forwarded to the Minister of Railways, Board of Railway Commissioners and to Mr. Bothwell, M.P.”

On January 11, 1930, the Board sent forward to the Canadian Pacific Railway Company a copy of Mr. Bothwell's communication of December 24, 1929, for its information and submissions, drawing its attention to the application of the city which came to a hearing before the Board on December 8, 1923, when judgment was delivered by the late Hon. F. B. Carvell, wherein he referred to the railway company's willingness, at that time, to contribute \$2,500 towards a structure of this kind, and asking if the company would renew its offer of assistance to the same extent if the city was now in a position to proceed with the work and the Board recommended the construction.

On January 13 our Engineering Department advised the Division Engineer in Calgary, Alta., to go to Swift Current and make a careful inspection of this matter, particularly with reference to the location of the proposed bridge. Our Chief Engineer pointed out that it was proposed to place the bridge on the old road allowance east of the round-house.

A letter, bearing dated January 25, 1930, was received by the Board, in reply to one from the Board of January 11, 1930, wherein it was stated that the railway company was taking up with the city of Swift Current questions respecting the type and location of the overhead foot-bridge, as well as the question of clearances. The company advised that, subject to these questions being settled in a manner satisfactory to the railway, they would be prepared to contribute to the cost of the bridge to the extent of \$2,500.

The Division Engineer in his report to the Board of February 10 last, advises having made an inspection of the proposed footbridge on January 31 in company with the bridge and building master of the railway company, after having previously discussed the matter with the company's maintenance of way engineer. Mr. J. G. Laycock, Mayor, and Mr. P. Smith, Superintendent of Works, for the city of Swift Current, were present on behalf of the city when this inspection was made. Reference was made by our engineer to a provisional estimate of \$32,000 which had been made by the chief engineer of the railway. This estimate was considered a little high, and was referred back for checking.

The application was, therefore, in this position when it was again heard by the Board on March 31, 1930. Reference to the record, Vol. 557, p. 1613,



will show that I advised the parties then present that if further written submissions were deemed to be necessary, after the evidence now being taken; the parties would be permitted to file the same.

When the question of the cost of constructing the proposed bridge was referred to, the Canadian Pacific Railway solicitor at p. 1617 (Vol. 557) of the record had the following to say—

“There were several estimates depending upon what kind of bridge was built. There was an estimate made by somebody of \$23,000. There was a vast spread between them. They drew my attention to the vast spread in the estimates. Our estimate was much higher than \$7,000, very much higher at that time; the difference was largely in the kind of bridge contemplated.”

After the hearing, I instructed the Secretary of the Board to write the city solicitor and the Canadian Pacific Railway Company, requesting the parties to send in any further written submissions that they might desire to make before consideration was given to the evidence already before the Board.

Because of the wide variation in the estimated cost of the proposed structure, which in 1923 was said to be about \$7,000, and in February of 1930 about \$32,000, it was deemed advisable to again have the benefit of an engineer's report; which it was considered should be made jointly with an engineer of the railway in company with an Engineer of our Board. On May 20, the Board advised the Division Engineer in Winnipeg to go to Swift Current, after an arrangement had previously been made with the railway company's engineer, so that an estimate of the cost of constructing an overhead bridge might be made; Instructions were given that a separate estimate should be made for the bridge, (1) having an approach by means of steps, (2) having an approach by means of a ramp. The question came up of the difference in cost of wooden steps to that of metal steps; when our Division Engineer was making an inspection on the ground in June last.

After an inspection was made by our Engineer in company with an engineer of the railway company, on August 6, the report showed that three locations were examined: (1) over the tracks and in line with the west boundary of Sixth avenue East; (2) west of the round-house; between Third and Fourth avenue; and, (3) in the vicinity of Central avenue. The site most favoured for the location of the foot-bridge was the one along the western boundary of Sixth avenue East. This the report recommended as the one which will serve to advantage the greater part of the population south of the railway and give the residents the privilege of good street and sidewalk connection to any part of the town from the north end to the proposed location. Three estimates of cost were also furnished: Estimate “A”, using wooden steps, at a cost of \$21,530; Estimate “B”, using steel steps, at a cost of \$25,880; and Estimate “C”, using wooden ramps, 6 per cent grade, at a cost of \$27,405. Our Engineer recommends that a contribution of 40 per cent of the cost of the proposed overhead bridge be allowed from the Grade Crossing Fund.

The city clerk advised the Board, August 7, 1930, that the City Council had discussed the estimates submitted and agreed to the use of wooden steps, and I now quote from the railway superintendent's letter of August 28 to the city clerk, which says:—

“The plans made by the Manitoba Bridge and Iron Works and approved by our Bridge Department have now been received. Based on these the construction costs are estimated to be as follows:—

“A” Using wooden steps, \$21,530.

“B” Using steel steps, \$25,880.

“C” Using wooden ramps, 6 per cent grade, \$27,405.



"The Board's Engineer has, I understand, expressed the opinion, in conversation that he favoured the construction using wooden steps as in Estimate "A".

"Assuming that estimate 'A' of \$21,530 would provide a structure suitable to this company and to the city authorities, it would appear that sufficient funds are in sight to take care of the cost of the structure, the city having authority to appropriate \$10,000; 40 per cent contribution from the Grade Crossing would be \$8,612 which, together with our maximum offer of \$4,000 would be sufficient to cover the entire cost and leave a small margin for contingencies.

"The foregoing being so; it would be well as the next step, for the city to prepare an application to the Board for a maximum contribution from the Grade Crossing Fund, the application is necessary to be endorsed by this company, it being a contributor to the cost of the bridge.

"As the plans have been approved by our Bridge Engineer, and if the city will officially endorse type 'A' it would be well for you to send the application to the Board without delay."

Attention might be drawn, in the letter just quoted, to the increase in the amount of contribution now offered by the Railway Company; and which amounts to \$4,000.

As a result of the negotiations that have taken place between our engineers, the officials of the Canadian Pacific Railway Company and the city, a new application was, on October 29, 1930, filed with the Board by the city of Swift Current, under sections 257 to 266 of the Railway Act, permitting or directing the erection of a foot-bridge over the Canadian Pacific Railway tracks in the said city of Swift Current, at such location as may be agreed upon by the city and the railway company and approved of by the Board, and in which they ask for a contribution of 40 per cent towards the actual cost of construction, from the Railway Grade Crossing Fund.

The present application alleges that it is made in accordance with an arrangement and understanding arrived at between the city of Swift Current and the Canadian Pacific Railway Company, as evidenced by a letter from Messrs. Bothwell & Roth, solicitors for the said city of Swift Current to D. C. Coleman, Vice-President of the Canadian Pacific Railway Company, bearing date October 16, 1930, and Mr. Coleman's reply, dated October 23, which I quote as follows:—

"WINNIPEG, October 16, 1930.

"D. C. COLEMAN, Esq.,  
Vice-President,  
Canadian Pacific Railway Company,  
Winnipeg, Man.

*Re Swift Current Overhead Bridge*

"DEAR SIR,—The arrangement and understanding arrived at between the city of Swift Current and the Canadian Pacific Railway Company through the correspondence and negotiations which have recently taken place is, as we understand it as follows:—

"The city is to make application to the Board of Railway Commissioners for an order permitting or directing the erection of a foot-bridge at such location as may be agreed upon by the city and the railway company and approved by the Board. Plans and specifications of the said bridge are also to be agreed upon between the city and the railway and approved of by the Board. If the Board will grant a contribution of 40 per cent from the Grade Crossing Fund, the railway com-

pany has agreed to make a contribution of \$4,000 toward the cost of construction of the said bridge, and it is hoped that a contribution of 40 per cent of the costs may be obtained through the Board from the Grade Crossing Fund, and the city is to pay the balance of the costs of the said bridge. The city is also to assume the responsibility of the maintenance, repair, reconstruction, or replacement of the said bridge, when once constructed.

"The above outlines the arrangement which was arrived at between the city and the company. Will you please let us have a letter confirming the above, and oblige,

"(Sgd.) BOTHWELL & ROTH,  
"City Solicitors."

"WINNIPEG, MAN., October 23, 1930.

"Messrs. BOTHWELL & ROTH,  
Solicitors for the City of Swift Current,  
Swift Current, Sask.

*Re Swift Current Overhead Bridge*

"DEAR SIRs,—I have your letter of 16th instant.

"The letter accurately outlines the arrangement which has been arrived at between the city and the company. This letter may be accepted as a confirmation of the arrangement as outlined in your letter."

"Yours truly,  
"(Sgd.) D. C. COLEMAN."

I find, on November 12, 1930, that the general solicitor of the railway company in Montreal wrote the Board confirming the arrangement which had been arrived at between the city of Swift Current and the western officials of the railway company, which says:—

"I have received through our western officials copy of the application of the city of Swift Current for authority to erect a foot-bridge over this Company's line, and may say that this company is prepared to consent to the issue of an order upon the terms of the application and correspondence attached thereto."

At the time Swift Current was merely a village and there was no surveyed townsite on the south side of the tracks there was a Dominion surveyed road allowance across the Canadian Pacific Railway tracks at what is known to-day in Swift Current as Sixth avenue East. The Canadian Pacific Railway acquired title to that road allowance by transfer issued by the Commissioner of Public Works in the old Northwest Territories Government on January 26, 1902, and another crossing was opened up 1,600 feet further east in lieu thereof, at what is known as Eleventh street East. The company then proceeded to lay out its yards and to-day there are sixteen or seventeen tracks across Sixth avenue East. The crossing at Eleventh street East is a level one and there is considerable traffic over it. There is a two-foot sidewalk on the east side only of the 66-foot road allowance that crosses the rails at level, and people coming from the south-west side have to cross this 66-foot road allowance and recross it in order to come back to the residential side. There is no sidewalk on the west side. A double main line track must be crossed and three highways converge at the railway crossing. The residential section south of the railway tracks is located south and west of this crossing. Prior to 1922 the citizens of the south side were permitted to cross the tracks at any place, without interruption, but



since 1923 they have been prohibited from crossing. The railway company prohibit such trespassers by policing the tracks and fines are sometimes imposed, but in defiance of their being restricted, it is shown in evidence that they still use the yards to cross. It is estimated that there are to-day approximately 500 people living on the south side. There is no means of transportation, such as bus, or street car service to convey the people across and it is consequently necessary for the people who live on the south side to walk approximately 1,500 feet east and come back again approximately 1,500 feet in order to do shopping, get mail, attend school, or church. Children cross from the south side to go to high school and a considerable number of people living on the south side work on the north side and must cross.

A census of movements, as filed with the Board, shows the following traffic, during a 48-hour period, on March 28 and 29:—

	Pedestrians	Cars	Trucks	Teams
March 28.. . . . .	300	413	101	80
March 29.. . . . .	364	606	56	117

The traffic moving over the tracks shows that between 300 and 400 pedestrians cross daily in spite of the fact that the tracks are policed and occasionally fines are imposed upon pedestrians for trespassing.

The application as it is now presented to the Board for its consideration embodies new facts, as an agreement has been reached between the city and the railway company for the construction of an overhead foot-bridge over the railway company's tracks along the western boundary of Sixth avenue East. Plans have been filed, as agreed upon between the parties to include the estimate of \$21,530, referred to earlier in my report as Estimate "A," and which is considered the most suitable for present-day needs, and the railway company has increased its voluntary contribution towards the cost of the proposed structure to the sum of \$4,000.

A careful perusal of the facts that have been brought out in the evidence submitted orally, as well as in the written submissions filed with the Board, the agreement entered into between the city and the railway company, do, in my opinion, constitute new and material evidence to support the Board in altering its decision of 1923 when it dismissed the city's application and to give favourable consideration to the facts presented in the present application. I would, therefore, recommend to the Board that the Canadian Pacific Railway Company be directed to proceed with the work of erecting over its railway, at Sixth avenue east, a foot-bridge for the purpose of enabling persons, passing on foot, to cross the railway by means of such bridge. This, to my mind, can well be considered a work within the meaning and intent of the Act, as one for the protection, safety and convenience of the public, and in conformity with the ruling of the Board, dated September 21, 1928, and which recites:—

"In the case of highway diversions for the protection, safety and convenience of the public in respect of highway crossings of railways at rail level whereby such crossings are relieved from a substantial volume of highway traffic, a proper contribution to the expense of such highway diversion may be made from the Railway Grade Crossing Fund although the complete elimination of such crossing be not possible in every instance, and such contributions will be accordingly so ordered."

The necessity of diverting the traffic by the construction of an overhead foot-bridge for the protection, safety and convenience of the residents of South Swift Current is clearly established.

I would recommend to the Board that order be permitted to issue allowing the new application of the city of Swift Current, as filed, for the construction



of the proposed foot-bridge over the tracks of the railway, along the western boundary of Sixth avenue East, at a cost as submitted in Estimate "A" of \$21,530 and agreed to by the city and the railway company.

I would suggest that a contribution of 40 per cent towards the cost of actual construction work be allowed out of the Railway Grade Crossing Fund. The Canadian Pacific Railway Company, as per its agreement with the city, would be a contributor to the extent of \$4,000, and the balance of cost, including maintenance, should be assessed against the city of Swift Current.

I would recommend that the work be proceeded with immediately.

Respectfully submitted,

J. A. STONEMAN,  
*Commissioner.*

OTTAWA, November 29, 1930.

Chief Commissioner McKeown, Assistant Chief Commissioner McLean, Deputy Chief Commissioner Vien, and Commissioners Lawrence and Norris concurred.

*Application of the Canadian National Railways under Sections 252 and 256 of the Railway Act, for authority to cross certain highways and road allowances with its proposed line between Longue Pointe and Eastern Junction, these crossings being located in the City of Montreal, the Town of St. Leonard de Port Maurice, the Town of Montreal Nord, the Town of St. Michel de Laval, and the Town of St. Laurent, all in the Province of Quebec, as shown on plan No. WIF212-1.1 revised to October 2, 1930, and profile VIF212-1.1 revised to October 2, 1930.*

*The approval of the following crossings is now sought: Sherbrooke Street, Lacordaire Street, proposed Metropolitan Boulevard, Cote St. Michel Road, Pie IX Boulevard, Montee St. Michel Road, Delorimier Avenue, St. Hubert Street, Stanley Bagg Avenue, Lajeunesse Street, Berri Street, St. Lawrence Boulevard, and to cross the Canadian Pacific Railway at station 490, between Bremner Street and Stewart Street, and the Montreal Tramways on Stanley Bagg Avenue.*

File No. 9437.319.16

#### JUDGMENT

The CHIEF COMMISSIONER: The discussion before us this morning has, I think, cleared the atmosphere considerably, and there is no reason why the Board should not immediately express the view it entertains, having heard all the parties in interest.

It is appreciated by all that it is not within the power of the Board, and the Board is not asked, to make any alteration in the layout, that is, in the route from Longue Pointe to Eastern Junction. That matter then is settled.

Now the question of the construction of the railway along that line involves the crossing of certain streets, and we are asked to-day to approve of plans which have been filed and to give authority to cross those streets which are named in the notice of hearing.

The approval of these plans will, to a certain degree if not wholly, determine the nature of the construction itself, as to whether it will be in part elevated, in part depressed, or level crossings at certain places.

The city criticizes these plans, mildly, and says that it has not had an opportunity of giving to them that consideration which the importance of these works demands from the city corporation, in view of the fact that as the railway is laid out it will remain for many years to come. The delay which the city

asks for is criticized, but the Board is not particularly concerned in following out the line of criticism which has been suggested. What the Board is concerned with can, I think, be summarized under two heads:—

In the first place having these plans before it, and being expected to act under the duties imposed upon it, the Board should see that the work is not unduly hindered; and in the second place, it should assure itself that nothing is so hurriedly done as to prove to be a detriment to the city itself.

These are the features which present themselves to the Board to be determined, and which the Board will have to deal with.

This is wholly a technical matter; it is a question to be determined by the engineers, to be thoroughly looked into by the engineers of the parties in interest, to see if they can come to some amicable understanding.

It is plain that there has not been sufficient promptitude on its part to justify the city in asking for, or to entitle it to, any more delay, but the Board feels that it has a responsibility in the matter, and does not wish to take any course, it would hesitate long before taking a course, which would involve any detriment to the city.

The Board relies upon the advice given to it by its Engineering Department in these matters. As you all know, the Board has an Engineering Department, manned and staffed in a fully competent manner. If there is a division of opinion ultimately between the engineers of this city and the engineers of the railway company over the questions involved, it is to our Engineering Department that the Board looks for guidance. Therefore it seems to the Board to be the proper way of dealing with this situation this morning, both in order to avoid delay which, in view of the situation put forward by the railways may be important, and also in order not to take a course which might be detrimental to the city, that, having our Chief Engineer here, he be directed to immediately put himself in touch with the engineers of the railways, and with the engineers of the Montreal Commission, or of the city, who may desire to consult with him, and discuss these individual crossings, and get their views with regard to them, and endeavour to reconcile these divergent opinions. If there be any agreement arrived at, he will make a report to the Board as to what their views are with reference to these engineering matters now in dispute. We will ask our Chief Engineer to take the matter up at once, and that he will not delay in getting these parties together, if they will come together. If they will not come to any agreement, he will make such report to us as he may think proper, to be dealt with by the Board.

That is the decision of the Board. In view of the divergent interests represented here, it seems to me that the Board can come to no other conclusion.

Mr. LAURENDEAU: Do I understand that if there is no agreement, a date will be fixed by the Board for a hearing of the case?

The CHIEF COMMISSIONER: No. We will then have the report of our Chief Engineer before us. Why continue the discussion? We will ultimately act, it is to be presumed, as in the past, upon the report of our Chief Engineer. If we could then be shown there was any benefit to be gained by a further discussion, or if our Chief Engineer reports to us that it would be beneficial to do so, it would be all right to take that course.

Mr. LAURENDEAU: Do I understand that the Board can refer the matter to the Chief Engineer perhaps to give a decision upon that question?

The CHIEF COMMISSIONER: That is as may be when we get the report. When we get a report from our Chief Engineer it may be that we shall wish further enlightenment upon some particular point, but the Board is not at the moment binding itself, or even promising, that there will be any further public discussion.



The DEPUTY CHIEF: I quite concur in the remarks made by the learned Chief Commissioner as regards the disposition to be made of this case as now on record. My understanding of the practice of the Board, which has been mentioned by the Chief Commissioner in the last few words of his judgment, is that this report will be dealt with in the ordinary course. This ordinary course, as I understand it from the knowledge I have acquired since I have been on the Board, is that when a report of this nature is received by the Board, it is communicated to the interested parties, and according to our procedure they have the right to make submissions in connection therewith, and the matter is dealt with after those submissions have been received.

I concur entirely in the disposition of the case now made, but reserving the one point, which I think is reserved in the judgment of the learned Chief Commissioner.

I want to make it clear that my view is that when the report of the Chief Engineer is received, the ordinary practice is that it will be communicated to all the interested parties, and thereafter if any submissions are necessary, they are dealt with in due course.

The CHIEF COMMISSIONER: I do not foresee any difficulty in dealing with the Chief Engineer's report when it comes in, because the Board is always anxious to preserve the utmost fairness in giving everybody an opportunity to reply.

However, in this case, whether there will be anything to refer back to the engineers of the interested parties is a matter upon which I make no pronouncement at all.

The CHIEF COMMISSIONER: There is one thing which the Deputy Chief Commissioner very properly calls to my attention, something we want to avoid; that is, after the Chief Engineer has had his discussions (which the Board hopes will iron out all these difficulties and bring them into unanimous agreement) it is very undesirable that people should, by reason of not knowing of what is going on, come and say that they want to be heard on this or that point; we therefore would like anybody in the possession of information to advise the Board of it, so that we can be assured that the matter will not be dealt with behind their back.

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ORDER No. 45892

*In the matter of the application of H. G. Toll, Agent, Transcontinental Freight Bureau, Chicago, Illinois, for permission to file, on less than statutory notice, supplements to Transcontinental tariffs increasing the international rates on grain, grain products, and seeds.*

File No. 27612.53

FRIDAY, the 5th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the order of the Interstate Commerce Commission in Docket 17000 (Part 7), Rate Structure Investigation, grain and grain products within western district and for export, dated July 1, 1930 (as amended), requires readjustment of rates on those commodities, effective January 1, 1931, and, conformably therewith, changes in rates are also necessary from points in Canada to points in the United States, from points in the United States to points in Canada, and between points in the United States through Canada,—



*The Board orders:* That H. G. Toll, Agent of the Transcontinental Freight Bureau, acting under powers of attorney, be, and he is hereby, permitted to file, upon twenty days' notice, effective January 1, 1931, supplements to his Tariffs C.R.C. Nos. 563, 566, 571, and 573, increasing rates on grain, grain products, and seeds.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 45900

*In the matter of the application of the Northern Alberta Railways Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Peace River Subdivision from mileage 97·4 to mileage 113·4, Fairview to Hines Creek, in the Province of Alberta.*

File No. 31574.27

FRIDAY, the 5th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*  
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Peace River Subdivision, from mileage 97·4 to mileage 113·4, Fairview to Hines Creek, in the province of Alberta.

H. A. McKEOWN,  
*Chief Commissioner.*

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ORDER No. 45904

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 5th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 23 to Tariff C.R.C. No. E-1302.  
Supplement 5 to Tariff C.R.C. No. E-1504.  
Tariff C.R.C. No. E-1677.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45936

*In the matter of the General Order of the Board No. 448, dated August 26, 1927; and tariffs published by the Canadian National Railways on grain and flour, C.R.C. No. W-545 and C.R.C. No. W-546;*

*And in the matter of the application of the Government of the Province of Alberta for leave to appeal to the Supreme Court of Canada from the Order of the Board No. 45846, dated November 25, 1930, refusing the application of the Applicant for an order or direction that the Canadian National Railways do forthwith publish, file, and put into effect tariffs on grain and flour to Fort William, Westport, and Armstrong, and to Vancouver as in the application and in the statements thereto annexed set out.*

File No. 34123.74

THURSDAY, the 11th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Upon reading the submissions filed in support of the application, and the consent of the Canadian National Railways,—

*The Board orders:* That leave be, and it is hereby, granted the said Government of the Province of Alberta to appeal to the Supreme Court of Canada upon the following questions of law, namely:—

(1) Whether as a matter of law the Canadian National Railways have any right to charge the rates in the said application complained of?

(2) Whether as a matter of law the Board has any right to allow the Canadian National Railways to charge the rates in the application complained of?

(3) Whether as a matter of law the rates complained of in the said application do not contravene the provisions of paragraphs 1 and 2 of General Order No. 448, dated August 26, 1927?

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 45935

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 12th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 14 to Tariff C.R.C. No. E-1236, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,

*Chief Commissioner.*

## ORDER NO. 45943

*In the matter of the application of the Canadian National Railways, for authority to supplement their tariffs C.R.C. No. W-542 and C.R.C. No. 488, on one day's notice, publishing amended distributing class rates from North Battleford, Battleford, Camrose, Calgary, and Edmonton, to stations on the Flin Flon and Sherridon Subdivisions; also on petroleum and products, Calgary to the same points, establishing rates on the proper basis in lieu of the rates erroneously published in Supplement 26 to tariff C.R.C. No. W-542 and Supplement 32 to tariff C.R.C. No. W-488.*

File No. 27612·54

TUESDAY, the 16th Day of December, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

*It is Ordered:* That the Canadian National Railways be, and they are hereby, authorized to supplement their Tariffs C.R.C. No. W-542 and C.R.C. No. W-488, on one day's notice, publishing amended distributing class rates from North Battleford, Battleford, Camrose, Calgary, and Edmonton to stations on the Flin Flon and Sherridon Subdivisions; also on petroleum and products, Calgary to the same points, establishing rates on the proper basis in lieu of the rates erroneously published in Supplement 26 to tariff C.R.C. No. W-542 and Supplement 32 to Tariff C.R.C. No. W-488.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER NO. 45946

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822·2

TUESDAY, the 16th Day of December, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

*The Board Orders:* That the tolls published in Supplement No. 39 to Tariff C.R.C. No. E-1237, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*



## ORDER No. 45961

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 17th day of December, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 13 to Tariff C.R.C. No. E-1239 and in Supplement No. 27 to Tariff C.R.C. No. E-1246, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45962

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

WEDNESDAY, the 17th day of December, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 39 to Tariff C.R.C. No. E-1237, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45972

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

THURSDAY, the 18th day of December, A.D. 1930.

S. J. McLEAN, *Assistant Chief Commissioner.*  
C. LAWRENCE, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 37 to Tariff C.R.C. No. E-1235, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 45973

*In the matter of the application of The Steel Company of Canada, Limited, of Hamilton, Ontario, for an Order suspending all amendments to tariffs of the Canadian Pacific and the Canadian National Railway Companies excluding the application of scrap iron rates on crossings, frogs, switches, and switch points.*

File No. 27001.14

SATURDAY, the 20th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon reading what has been filed on behalf of The Steel Company of Canada, Limited, and the Canadian Freight Association; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

*It is ordered:* That the items in Supplement No. 45 to Canadian National Railways Tariff C.R.C. No. E-1283 and Supplement No. 198 to Canadian Pacific Railway Tariff C.R.C. No. E-3832, which provide, effective December 22, 1930, for the exclusion of scrap iron rates on crossings, frogs, switches, and switch points, be, and they are hereby, suspended, pending further order of the Board.

H. A. McKEOWN,  
*Chief Commissioner.*







The Board of

# Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, January 12, 1931

No. 23

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### *Dangerous Practices of Motorists, Drivers of Other Vehicles, and of Pedestrians at Protected Railway Crossings*

Files Nos. 45.8.1; 45.8.2; 45.8.3

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles, and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from August 1, 1930, to December 31, 1930, show seventy-six cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from January 1, 1930, to June 30, 1930, and (Eastern Lines) from May 1, 1930, to October 31, 1930, show a total of eighty cases.

The Toronto, Hamilton & Buffalo lines from August 1, 1930, to December 31, 1930, show five cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplors this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

## CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930				
Aug. 2	10.10	Queen St., Chatham, Ont.	674	Failed to stop at lowered Queen st. gate—breaking same.
"	2	Laurier Ave., Levis, Que.		While backing up auto struck side of long arm and split same.
"	4.45 p.m.	Charlotte St., Peterboro, Ont.	LA 190	Trying to cross when gates were being lowered.
"	7.29 a.m.	Farm crossing 10 poles east of M.P. 3 L'Orignal Subd.	F 11572	Drove over track without looking to see if train was coming; truck damaged and driver injured.
"	9.30 p.m.	Kingston Road	56663-C	Apparently misjudged distance, could not stop in time to avoid striking, N.S. of track.
"	14.44	2nd crossing east of Fort Langley.		Truck and trailer, loaded with piling, crossing main track, just clearing passenger train No. 4.
"	6.35 p.m.	King St., Peterboro, Ont.	LD-710	North arm of east gate broken. Driver claims brakes did not hold very good
"		Front St., Orillia Station, Ont.	247	Ran into gate when down breaking off 2 points.
"		Tessier, Saskatoon, Sask.	T-6-770	Truck failed to stop for crossing; train had to make emergency stop.
"	23.20 K.	33rd St., Saskatoon, Sask.	36-363	Auto failed to stop for crossing and engineer's signals. Stalled on track and engine had to make an emergency stop less than 2 feet from car.
"	11.20 p.m.	Walker Road, Walkerville, Ont.	22-993-C	Running into gate while down to protect crossing, claiming he did not see it.
Sept. 1	11.07 p.m.	Essa St., Allandale, Ont.	e,CX613	Auto ran under gates being lowered stopped at west gate, then started up again breaking off tip of one arm.
"	10 K.	Victoria Ave., Brandon, Man.	110-363	Came up to crossing and stopped then suddenly went over track ahead of engine and cars.
"	9.15 a.m.	Main highway around Isle Jesus at Laval sur le lac station L'Orignal S/D.	Que. F. 5977	While train was making stop, Ford truck ran into side of engine. Truck damaged, no person injured.
"	4.58 p.m.	Lansing sideroad, Toronto, Ont.		Truck ran into side of extra south hitting 'B' end of C.N. 508576 through carelessness of driver.
"	7.15 p.m.	Charlotte St., Peterboro, Ont.	LB 126	Approaching crossing too fast to stop when gates were lowered. Not watching to see gates were being lowered.
"	7.50 K.	Avenue M, Saskatoon, Sask.	1-604	Truck ran into side of flat damaging right front wheel and radiator of truck.
"		24th St., Saskatoon, Sask.	26-788	Disobeying stop signals.
"	18.35	24th St., Saskatoon, Sask.	18-35	Disregarded stop signals.
"	15.10	24th St., Saskatoon, Sask.	13-386	" "
"	12.40	24th St. crossing, Saskatoon, Sask.	51-130	" "
"		24th St. crossing, Saskatoon, Sask.	(Pedestrian)	Attempting to cross through box car while train in motion.
"	21 K.	24th St., Saskatoon, Sask.	94-634	Disregarded stop signals.
"	10.45 K.	Just east of east switch at Forgan.		Saw train too late, tried to back up but stalled on crossing and was struck by engine, damaging fender.
"	24-15	24th St., Saskatoon, Sask.	75.350	Disregarded stop signals. Very deliberate.
"	9.15	24th St., Saskatoon, Sask.	2446	Did not see stop signals.
"	12.30	East Main St., Welland, Ont.	A.Y. 63	Driving up to gate at full speed.
"	21.25	24th St., Saskatoon, Sask.	103924	Disregarded stop sign, very deliberate.
"	15.20	24th St., Saskatoon, Sask.	I-778	Started to drive in front of yard engine not looking either way.



## CANADIAN NATIONAL RAILWAY LINES—Continued

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930				
Sept. 15		Public crossing, Calder, Sask.	86-227	Not stopping to ascertain if train approaching.
" 15	14.25	Sixth St., Brandon, Man.	43-727	Ignoring stop signals.
" 16	12.45	Chilliwack, Vancouver Station.	40675	Attempting to pass crossing ahead of engine.
" 15	8.05	Queen Street, Chatham, Ont.	Ont. 68460-G	Stopped and started up crashing lower gate.
" 17		1st Ave., East, Prince Albert, Sask.	5530	Disobeyed stop signal, crossed track in front of approaching switch engine.
" 17	23.27 K	127th St. Crossing, Calder, Edmonton, Alta.	Alta. 58-574	Disregarded crossing watchman's stop signals and injured when struck by engine.
" 17	10.30 p.m.	Kathleen St., Sudbury, Ont.	JV-146	Ran into crossing bell. Bell, relay, pole, light sign, storage batteries, etc., totally destroyed.
" 20	10 K	Main St. Crossing, Vegreville, Alta.	Alta. 46-881	Driver hesitated then went on and stopped car in front of a slow moving train; two women slightly injured.
" 20	11.10 p.m.	Kingston Road, Cobourg, Ont.	MF-995	Driver stated he did not see gates before striking same.
" 21	12.10 a.m.	Front St., Orillia, Ont.	F-610	Auto drove through gates breaking main boards. Driver claimed brakes not working properly.
" 21	18.55	1st Public Crossing West of Ribstone, Alta.	Sask. 36-978	Stopped at crossing with front of auto slightly foul; disregarded whistle and bell; car badly damaged; four children and one adult injured.
" 22	11.10 K	1st crossing west of Drumheller Depot, Alta.	Alta. E-41	Attempted to cross in front of train; car engine stalled train struck same; no personal injuries; car badly damaged.
" 23	2.30 p.m.	Public Crossing, Victoriaville, Que.		Runaway horse struck and broke gate wing, drum shaft and side plate holding weights and wing on the left westerly side of public crossing on Notre Dame St.
" 24		Public, Hubbard, Sask.	Sask. 54354	Car skidded at crossing and fouled rails; driver left car and it was struck by train.
" 29	3.50 p.m.	Charlotte St., Peterboro, Ont.	Ont. 8096-X	Approached crossing too fast owing to condition of the roads.
Oct. 1		2nd Crossing east of Prescott, Ont.	Ont. OA-556	Auto crossed in front of train so close that it was just on side track.
" 4	10.00 p.m.	Ontario St., Port Hope, Ont.	NH-44	Auto standing foul of main line opposite Ontario House Hotel.
" 5	9.40	Public, Yorkton, Sask.	Sask. 103619	Did not notice train until too close to stop; so instead of applying brakes stepped on accelerator.
" 7	12.55	West St., Orillia, Ont.	ON-429	Drove under gates when they were being lowered, tearing top of auto—no damage to gates.
" 11	12.30	Front St., Orillia, Ont.	KK-314	Drove through gate breaking off point; claimed brakes not working.
" 14	10.10 p.m.	Queen St., Chatham, Ont.	Ont. 22-645	Drove into lower gate at north side of Queen St.
" 15	6.30 p.m.	Kingston Road, Cobourg, Ont.	Ont. MF-214	Driver did not notice gates were down and ran through both gates demolishing same.
" 20		Highway crossing east of Angusville station.	Man. 69-592	Ignored signals; crossed track ahead of passenger train; accident averted only by inches.
" 21	16.50	Sixth St., Brandon, Man.	110-369	Ignoring stop signal when switch train approaching crossing.
" 21	7.50 p.m.	Lindsay St., Drummondville, Que.		Auto ran through gates breaking wood work of both of them.
" 22	17.40	24th St., Saskatoon, Sask.	7-692	Disregarded stop signal narrowly escaping death as watchman had to stop No. 2 in order to avert accident.
" 27	19.45	Regina Highway, Melville, Sask.	Sask. 100023	Driving car with defective brakes and could not stop approaching crossing.
" 31	7.00 p.m.	Kingston Road, Cobourg, Ont.	LR-739	Driver stated he did not see gates before striking same.



CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930				
Nov. 5	14.45	Private crossing, Driver, Sask.	Sask. T-17666	Did not look for train before coming into crossing.
" 7	14 K	Dewdney Ave., Regina, Sask.	Sask. 570	Disregarded wigwag and crossing bell—drove over crossing ahead of train 62 narrowly averting accident.
" 11	13.15	First public crossing east of Waseca, Sask.	Sask. 17-268	All statutory requirements in the way of whistle, etc., observed by train—driver struck—no injuries.
" 15	5.35 p.m.	King St., Peterboro, Ont.	KX-335	Approaching crossing too fast.
" 18	17.35	Public road crossing at Munson Junction, Drumheller Subd., Alta.	Alta. 34451	Ran into side of stationary train; auto damaged but no personal injuries.
" 19	6.20 a.m.	Mountain St., Montreal, Que.	Que. F-23488	Disregarding stop signals; struck flagman and truck struck by train.
" 19	6.15 p.m.	Wellington and St. Patrick Sts., Montreal, Que.	Que. 38185	Disregarded stop signals resulting in auto being struck by train.
" 21	14.10	Sixth St., Brandon, Man.	Man. 45-105	Ignoring stop signal when train approaching crossing.
" 22	18.15	Highway No. 14, Juniata, Sask.	Sask. 25491	Did not see train; ran into side of same.
" 23	21.15 K	Quadra St., Crossing, Victoria, B.C.	12-942	Ran into caboose in heavy fog as train pulling over crossing.
" 24	8.30 a.m.	Highway St. Paul L'Ermite, Que.	32867	Auto not under control; skidded into side of train at crossing.
" 24	4.50 p.m.	West St. crossing, Orillia, Ont.	K.J.-490	Could not stop in time and ran into gates breaking points off one gate.
" 25	18 K	Crossing at south wye switch, Alsask, Sask.		Attempted to cross in front of train; engine struck rear wheel and knocked grain box off; team bolted; no one hurt.
" 26	6.20 p.m.	Concession Road between Con. A and B. Twp. of Mara, part of public highway No. 12.	637	Driving into side of moving train.
" 29	9.45 p.m.	Main St., Glencoe, Ont.		Ran into lowered gates; no damage to car.
Dec. 1	1.18 p.m.	Crossing at north end of station platform, Aurora, Ont.	Ont. U-5378	Unable to stop in time; no damage.
" 2	12.05 a.m.	Main St. crossing, Glencoe, Ont.	L-8574	Auto struck lowered gates breaking off single blade. Apparently driver did not see gates down.
" 2	15.50 K	Crossing one mile east Drumheller, Alta.	Alta. 1807	Attempted to cross in front of train with heavy load of grain; engine stalled and train hit car; no one injured.
" 8	7.45 p.m.	Front St., Orillia, Ont.	R.M.-25	Drove through gates breaking one arm off.
" 14	9.40 p.m.	Queen St., Chatham, Ont.	Ont. A.D. 207	Crashed into lowered gates.

## CANADIAN PACIFIC RAILWAY—EASTERN LINES

## NEW BRUNSWICK DISTRICT

May 16	5.35 p.m.	Douglas Ave., Saint John.	N.B. X-938	Auto truck turned on crossing.
June 14	2.20 p.m.	Douglas Ave., Saint John.	N.B. 7940	Auto dashed under gates as they were being lowered for train No. 128.
July 4	3.10 p.m.	Douglas Ave., Saint John.	N.B. 11379	Auto dashed under gates while same were being lowered for train No. 15.
" 28	2.10 p.m.	Douglas Ave., Saint John.	N.B. X-1890	Auto truck turned on crossing.
May 15	9.00 p.m.	Fairville Crossing	N.B. 8003	Car passed through crossing while watchman waved signal, red light, against him.
June 1	4.35 p.m.	Fairville Crossing	N.B. 12104	Car collided with post in front of gate breaking air pipe. Bell was ringing.
July 18	6.50 p.m.	Fairville Crossing	Mass. 711995	Car crashed against east end of gate, breaking same. Bell was ringing.

## CANADIAN PACIFIC RAILWAY—EASTERN LINES—Continued

## QUEBEC DISTRICT

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930				
June 7		Crown St., Quebec	Ice wagon	Wagon passed too close to northwest gate which was in upright position, resulting in top of wagon catching gate and breaking it completely off
" 7		Crown St., Quebec	T-1503	Taxi struck and broke southeast gate in two.
" 26		Dorchester St., Quebec	L-91	Motor truck passed too close to south side gate which was in upright position breaking gate.
July 26		St. Valier St., Quebec	15912	Auto struck and broke north side gate.
" 27		Crown St., Quebec	16134	Ford roadster crashed through both northwest and southwest gates.

## ONTARIO DISTRICT

May 2	4.05 p.m.	Princess St., Kingston	60-355-C	Truck passed over crossing immediately in front of train
" 2	6.10 p.m.	Kingston Road crossing, Belleville		Truck drove upon crossing in face of approaching train.
" 8	5.55 p.m.	Ritson Road, Oshawa		Cyclist rode bicycle upon crossing in face of approaching train.
" 19	3.00 p.m.	Princess St., Kingston	Ont. 59989-C	Truck backing alongside tracks struck corner of car in train which had stopped.
" 26	8.00 p.m.	Park St., Peterboro	KY-433	Drove auto upon crossing as train approached.
" 26	11.35 p.m.	Victoria St., Tweed	MH-726	Auto driven over crossing just in front of train, engine barely missing car.
" 30	11.35 a.m.	Kingston Road, Belleville	2-119	Motorcycle passed over crossing immediately in front of train.
June 12	5.46 p.m.	Mil. 35 Oshawa S.D.	Farm tractor	Collision with fast passenger train narrowly escaped on public crossing.
" 18	5.48 a.m.	Godfrey Stn.	MC-555	Parked car too close to platform to wait for train. Engine collided lightly with fender of car when it passed.
May 10		Centre St., Chatham	A.J. 660	Auto ran into gate arm and into side of freight train slightly injuring driver.
" 14	10.20 a.m.	Queen St., Chatham	A.D. 175	Auto ran into gate arm breaking it and struck side of freight train.
" 14	8.00 p.m.	Quebec St., London	M-5097	Auto disregarded watchman's stop sign and crossed tracks in front of engine.
" 14	8.45 p.m.	Quebec St., London	L-3475	Auto disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 23	8.00 a.m.	Waterloo St., London	L-9053	Auto ran into and broke north gate arm which was down for approaching train.
" 24	3.30 a.m.	Richmond St., London	P-1600	Auto ran into and broke crossing gate.
June 6	2.35 a.m.	Richmond St., London	Mich. 564-689	Auto ran into northwest gate arm breaking it.
" 26	1.25 p.m.	Richmond St., London	L-830	Auto crashed through crossing gates breaking gate arm.
July 9	8.07 a.m.	Quebec St., London	L-2171	Auto rushed across crossing in front of train.
" 12	2.40 p.m.	Quebec St., London	L-6820	Auto dashed across in front of yard engine.
" 13	11.05 p.m.	Pall Mall St., London	L-6780	Auto ran into gate arm breaking it.
" 26	10.10 a.m.	Adelaide St., London	28-572-C	Auto crossed tracks in front of yard engine.
" 26	12.07 p.m.	Adelaide St., London	L-263	Auto disregarded watchman's stop sign and crossed tracks as yard engine approaching.
" 13	4.50 a.m.	St. Clair Ave., Tor	O-9788	Auto ran into gate arm breaking it.



## CANADIAN PACIFIC RAILWAY—EASTERN LINES—Continued

## NEW BRUNSWICK DISTRICT

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
1930 Aug. 12....	4.45 p.m....	Douglas Ave. M. 1-8, St. John, S.D.	N.B. 11563.....	Auto turned on crossing.
" 12....	8.50 p.m....	" "	N.B. 9167.....	Auto unable to stop when gates were lowered, necessary for gateman to let him pass through to avoid breaking same. Driver claimed brakes failed to function.
Sept. 4....	4.00 p.m....	" "	N.B. 11912.....	Auto turned on crossing.
" 16....	.....	" "	.....	Boys from Vocational School pushed up gate as train No. 105 was passing.
" 25....	8.10 p.m....	" "	N.B. 9282.....	Auto drove under gates while same were being lowered.
Aug. 21....	6.10 p.m....	Fairville Crossing, St. John S.D.	N.B. 10549.....	Car passed under east gate as it was being lowered, bell ringing at time.
" 29....	3.20 p.m....	" "	N.B. 35161.....	Car passed under east gate as it was being lowered, bell ringing.
Sept. 9....	8.55 p.m....	" "	N.B. 12867.....	Car passed under east gate as it was being lowered, bell ringing.
" 29....	3.25 p.m....	" "	N.B. 10463.....	Car passed under east gate when gate was almost completely lowered, tearing top of car, bell was ringing.
Oct. 17....	4.40 p.m....	" "	N.B. 11236.....	Car passed through crossing, bumping crossing marker, east side of crossing, breaking it off. Bell was ringing.

## QUEBEC DISTRICT

Sept. 12....	.....	South Yard, Farnham	Que. 78000.....	Gateman let two cars by, and looked in both directions but seeing no vehicles rang bell and put the gates down and an automobile went through breaking both gates.
Oct. 6....	.....	St. Hubert St., Mont- real.	Que. 30609.....	Auto was left standing near crossing and brakes not applied, with the result that when train was passing vibration caused car to run down and struck moving train.
" 25....	.....	Papineau Ave., Mont- real.	Que. W-1289....	Auto driven through gates and cost of repairs being assessed against owner of car.
" 26....	.....	Park Ave., Montreal..	Que. 58903.....	Auto driven through gates and cost of repairs being assessed against owner of car.
Aug. 2....	.....	Crown St., Quebec....	Que. 40254.....	Gates had been lowered for C.N. extra from Quebec and before train had passed, an auto coming from north struck northwest gate and continuing struck southwest and southeast gates breaking all three.
" 14....	.....	Crown St., Quebec....	Que. 110537.....	Gates lowered for train 357 when auto going from south to north struck southeast gate.
Sept. 30....	.....	Bridge St., Quebec...	Que. F-1141.....	Motor truck loaded with hay, going in the direction of Limoilou, passed too close to Northeast gate, which was up, resulting in load catching and breaking gate at base.
" 17....	.....	Gouin Blvd., Bordeau	Que. F-6870.....	Auto coming from south of tracks when crossing gates were down, ran through southwest gate breaking same.
" 27....	.....	Gouin Blvd., Bordeaux	Que. 27577.....	Auto coming from south of track when gates were down, struck south gate breaking same, then crossed to north side and broke northwest gate.
Oct. 3....	.....	Crown St., Quebec....	Que. 11914.....	North side gates were lowered when auto proceeding from north to south struck and broke northeast gate.
" 7....	.....	Crown St., Quebec....	Que. T-1702.....	Gates had been lowered for train 357 when auto proceeding from south to north struck and damaged southeast gate, then backed up to clear train.



CANADIAN PACIFIC RAILWAY—EASTERN LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Oct. 24		Bridge St., Quebec	Que. 16801	Gates were lowered for train when auto swerved to right of another auto standing at blocked crossing and crashed through northeast and south-east gates.
" 26		Bridge St., Quebec	Que.	South gates lowered for engine to proceed to Quebec yard when gateman noticed car coming at high rate of speed which crossed over crossing without stopping, breaking south-east gate.
" 31		Crown St., Quebec	Que. 114517	Gates lowered for C.N. train No. 11, when auto approaching from north, striking northwest gate slightly damaging same. Car stopped in crossing then backed up in time to clear train. Lamp on north side of gate out at time, evidently due to jar when lifting gate.

## ONTARIO DISTRICT

Aug. 5	5.15 p.m.	Place D'Armes St., Kingston.	Ont. N.K. 326	Motor car passed over crossing in front of train, being struck and damaged slightly.
" 7	12.25 p.m.	Norwood St., Kingston.	Ont. V-697	Auto passed over crossing immediately in front of approaching train.
" 9	10.00 p.m.	Kingston S.D. Crossing, M. 2-5.	Ont. P.O. 689	Auto skidded as it approached crossing and stopped foul of track in face of approaching train. Car was struck and damaged slightly.
Oct. 14	1.22 p.m.	John St., Belleville		Shell Oil Co. truck approached crossing and on account of defective brakes, stalled on crossing and was struck by train.
" 27	7.30 a.m.	George St., Cobourg	Ont. M.E. 329	Auto struck track lorry on crossing.
" 18	1.28 a.m.	Church St., Belleville	Ont. C-3164	Motor truck towing other truck stopped with front wheels on crossing, attempting to back clear but could not do so and was struck and thrown against another truck, both being damaged.
Aug. 7	6.05 p.m.	Quebec St., London	Ont. P. 9530	Disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 28	8.53 a.m.	" "	Ont. L-993	Disregarded watchman's stop sign and crossed tracks in front of freight train.
" 30	4.15 p.m.	" "	Ont. L-9580	Disregarded watchman's stop sign and crossed tracks in front of yard engine.
" 31	3.30 a.m.	Richmond St., London.	N.Y. 8B-5302	Auto failed to notice gates down, skidded on pavement and broke gate arm.
Sept. 4	9.30 p.m.	Adelaide St., London.	Ont. M-6954	Auto disregarded watchman's stop signal and crossed tracks in front of train.
" 26	6.00 p.m.	William St., Chatham	Ont. A.F. 322	Auto ran through southeast gate arm breaking it.
" 25	5.42 p.m.	Quebec St., London	Ont. M-144	Auto disregarded watchman's stop signal and crossed tracks in front of yard engine.
Oct. 4	1.30 a.m.	Centre St., Chatham.	Ont. A.D. 367	Crossing gates were down, bell ringing, red lanterns burning, auto crashed through gate arms breaking same.
" 15		Quebec St., London	Ont. M-694	Auto crossed track in front of cars and had to swerve to avoid being struck.
" 20	10.25 a.m.	Eramosa Road, Guelph.	Mich. 658482	Auto unable to stop in time crashed into and broke north gate arm.
" 20	10.00 p.m.	Queen St., Chatham	Ont. 37-260C	Auto ran into northwest gate arm breaking it.
" 22	7.35 p.m.	Adelaide St., London.	Ont. L-3273	Auto disregarded stop signal and crossed tracks in front of train.
Aug. 12	5.40 a.m.	St. Clair Ave., Toronto.	Ont. T-2627	Auto ran into gate arm breaking same.
Sept. 11		Eastern Ave., Toronto	Ont. A-2574	Auto ran into, and damaged crossing gates.
Oct. 11		Front St., Toronto	Ont. 11615-C	Motor truck ran up on sidewalk, breaking sidewalk arm of gate.

## CANADIAN PACIFIC RAILWAY—WESTERN LINES

Date	Crossing	Licence	Remarks
1930			
June 7.....	Neebing Ave., nr. Fort William.	JE 472.....	Ford car driven by Robt. Jamieson drove into side of engine 2805 train No. 1, bending mud guard on auto. Driver entirely responsible.
Feb. 28.....	Portage Ave., MP-3 La Riviere S.D. (Winnipeg).	.....	Auto travelling west at fairly high speed struck by engine. Driver tried to beat train to crossing. Speed of train 6 m.p.h. Auto passed other cars which had stopped to let train pass by.
" 8.....	Public crossing E. of Elkhorn Stn. MP-64 Broadview S.D. (Brandon).	.....	Train 53 struck team attached to stoneboat. Owner A. Povey, uninjured, one horse killed.
June 22.....	Crossing E. of Oak Lake MP-32 Broadview S.D.	Man. 64-230.....	Train 3 struck Ford auto driven by J. Spencer. Rear end of car damaged.
" 12.....	1st crossing W. of Caron MP-17 Swift Current S.D.	.....	Mr. D. Morrison drove auto on crossing and front wheels did not approach crossing in direct line resulting in wheels dropping off west end of planks between the rails and engine stalling. He was unable to move car before being struck.
Jan. 20.....	1st crossing east of Esk.	.....	Train 51 struck team and wagon. Driver did not see or hear train approaching.
April 23.....	1st crossing W. of Elstow	.....	Auto truck ran into No. 52 striking rear tender truck. Driver failed to see or hear train.
" 23.....	1st crossing E. of DuVal	.....	Auto struck train Ex. 677 between engine and tender. Auto curtains up and driver failed to see or hear train.
May 21.....	1st crossing W. of Kandahar.	.....	Ex. W. 605 struck team and wagon killing one horse and the other had to be destroyed. Driver failed to note approaching train.
Feb. 3.....	Smelter Ave., on spur leading to Alberta Linsseed Oil Mills, Medicine Hat.	D-590.....	Car driven by Mr. Maier struck by yard engine 6256.
Mar. 3.....	Mile 98.6 Taber S.D.	Alta. 97-521.....	Train 512 struck Ford truck.
" 22.....	Mile 88.1 Crowsnest S.D.	Alta. 2-624.....	Extra W. 980 struck Studebaker Sedan.
" 28.....	1st crossing W. of Frank Station.	Alta. 56-916.....	Extra W. 3702 struck Chevrolet coupe.
April 17.....	Mile 25.6 Macleod S.D.	Alta. E-5-550.....	Train 92 struck Chevrolet truck.
May 9.....	1st Public crossing W. of Hillcrest Stn.	Alta. 14-293.....	Extra W. 3758 struck Whippet coach.
June 14.....	Mile 6.7 Laggan S.D.	11-113.....	Mr. Harry J. Webb of Calgary, driving Chrysler sedan reported to police that he had run into side of train about 24K. Train and engine crew entirely unaware of mishap.
May 16.....	Hardisty Ave. Mile 98.75 Leduc S.D.	Alta. 47-674.....	Plymouth sedan auto ran into ditch S. of crossing planks and stalled with rear end foul of track. While in this position was struck by yard engine 6823.
" 19.....	Barnet Ave., Lacombe.	2-306.....	Willys Knight sedan struck by train 92 backing up due to trainman giving signal to engineer before receiving clear signal from trainman on rear end.
Jan. 8.....	Mile 4.92 Westminster S.D. (Fraser Mills).	B.C. 31-443.....	Auto struck train Ex. 475 South.
June 27.....	MP-5 Glenboro S.D. (Murray Park).	.....	Truck loaded with gravel approached track from W. side and struck train No. 55. Driver failed to look if train approaching.
May 7.....	Mile 109 near East Switch, Pense, Indian Head S.D.	.....	Train 306, Engineer English, Condr. Bamford, struck land packer.
" 1.....	Donaldson's spur Mile 9.9 Turin S.D.	Alta. 22-281.....	Train 649 struck Ford truck.
Jan. 10.....	Third Ave., Kamloops.	B.C. 46-960.....	Hotel bus ran into side of ex. W. 3689.
" 23.....	Rogers St. Vancouver.	B.C. 84-442.....	Auto stalled on crossing struck by cut of cars.
Mar. 3.....	Horne Ave. Mission.	.....	Auto and trailer struck by work extra 469.
" 23.....	Coquitlam, Dewdney truck road, Mile 0.04 Westminster S.D.	B.C. 76-152.....	Auto ran into side of engine 475 train No. 813.
" 31.....	Essendene Avenue, Abbotsford.	B.C. 79-766.....	Auto struck by train No. 809, switching.



## CANADIAN PACIFIC RAILWAY—WESTERN LINES—Continued

Date	Crossing	Licence	Remarks
1930			
May 17.....	Gore Avenue, Vancouver	B.C. 85-627.....	Auto backed on to track struck by train No. 3.
June 21.....	Mile 18 Kimberley, S.D. (Kimberley).	B.C. 42-716.....	While Industrial train No. 3621 backing over main track crossing north of Kimberley Stn. at speed of about 5 m.p.h., auto approached and struck leading truck east side of car CP 376007 damaging auto radiator.
April 18.....	Mile 37.14 Pt. Alberni S.D. (Alberni Rd.)	B.C. 21-298.....	Ford coupe coming down hill ran into second car from engine ex. 3277 W. Slight damage to auto.
June 8.....	Mile 73.0 Victoria S.D. (Comox Rd. crossing).	B.C. 26-553.....	Train No. 2 struck right hand front fender of auto Crossing whistle sounded, engine bell ringing also crossing bell.
April 18.....	Broadway St., Yorkton.	46499 (1929).....	Drove across about 15 feet in front of No. 51 in spite of signals.
" 19.....	" "	69277 (1929).....	Drove across about 20 feet in front of engine 3085 in spite of signals.
June 5.....	" "	65243.....	Drove on crossing and turned lengthwise on same and stopped. No. 52 was about 10 rail lengths away and was stopped and car shoved off crossing. Car tried to observe signals but was unable to do so resulting in stopping on track.
" 9.....	" "	73414.....	Drove across about 30 feet in front of 977, disregarded signals to stop.
April 8.....	2nd St., Medicine Hat..	18-560.....	Car driven by S. J. Lehr ran through North gate breaking same.
" 21.....	4th St., Calgary.....	.....	Auto ran into both gates breaking them. Could not get number of auto as he was going too fast and had no lights.
" 26.....	" "	7-387.....	Ran into south gate breaking off both sides.
May 30.....	Allowance Ave., Medicine Hat.	Sask. 8-902.....	Car driven by A. M. Andruick of Schuler ran into north gate breaking same.
April 2.....	Powell St., Vancouver..	Truck B.C. 40-071	Ignored stop signal.
" 2.....	" "	Motorcycle 917..	" "
" 4.....	" "	Truck B.C. 381..	" "
" 4.....	" "	B.C. 78-399.....	" "
" 4.....	" "	B.C. 71-599.....	" "
" 8.....	" "	B.C. 68-537.....	Ignored stop signal and narrowly escaped being struck by engine.
" 12.....	" "	B.C. 81-315.....	Ignored stop signal.
" 22.....	Columbia Ave., Vancouver.	B.C. 83-229.....	" "
" 26.....	" "	Truck 72-743....	" "
" 29.....	" "	B.C. 93-644.....	" "
May 2.....	Powell St., Vancouver..	B.C. 70-408.....	" "
" 9.....	" "	B.C. 81-825.....	" "
" 9.....	" "	B.C. 96-879.....	" "
" 12.....	" "	B.C. 92-545.....	" "
" 14.....	" "	Truck 73-047....	" "
" 15.....	North Vancouver Ferry.	Taxi No. 34.....	Stopped on crossing and picked up passengers.
" 15.....	Powell St., Vancouver..	B.C. 86-525.....	Ignored stop signal.
" 20.....	" "	B.C. 80-891.....	" "
" 21.....	" "	B.C. 24-447.....	" "
" 22.....	" "	B.C. 80-351 (truck)	Ignored stop signal, yard engine had to stop to avoid striking truck.
" 22.....	" "	B.C. 98-845.....	Ignored stop signal.
" 22.....	" "	B.C. 98-845 (truck)	" "
" 23.....	Columbia Ave., Vancouver.	4-098.....	" "
" 25.....	" "	99-265.....	" "
" 25.....	Powell St., Vancouver..	98-697.....	" "
" 30.....	" "	77-719.....	" "
June 2.....	Columbia Ave., Vancouver.	B.C. 98-889.....	" "
" 3.....	" "	B.C. 67-219.....	" "
" 3.....	North Vancouver Ferry.	.....	Auto ran into gates as they were coming down.
" 4.....	" "	.....	" "
" 5.....	Powell St., Vancouver..	B.C. 65-584.....	Ignored stop signal.
" 6.....	" "	B.C. 66-127 (truck)	" "
" 8.....	North Vancouver Ferry.	.....	Two men walked up track and climbed over gate.
" 9.....	Powell St., Vancouver..	B.C. 80-143.....	Ignored stop signal.



CANADIAN PACIFIC RAILWAY—WESTERN LINES—*Concluded*

Date	Crossing	Licence	Remarks
June 10....	North Vancouver Ferry.	.....	Eight people ran under gate and had to stop while yard engine with cars went by.
" 11....	Powell St., Vancouver..	B.C. 93-448.....	Ignored stop signal.
" 12....	" " ..	B.C. 67-051 (truck)	Ignored stop signal and had to swerve to left to avoid being struck by engine.
" 12....	" " ..	B.C. 74-712.....	Ignored stop signal.
" 12....	Columbia Ave., Van- couver.	B.C. 66-071.....	" "
" 16....	Powell St., Vancouver..	B.C. 89-601.....	" "
" 17....	Columbia Ave., Van- couver.	B.C. 69-437.....	" "
" 19....	North Vancouver Ferry.	.....	18 persons forced open gate while yard engine switching in vicinity of crossing.
" 19....	" " ..	B.C. 18-163 (truck)	Ran under gate into path of engine.
" 20....	Powell St., Vancouver..	B.C. 67-256.....	Ignored stop signal.

## ESQUIMALT AND NANAIMO RAILWAY

June 9....	Esquimalt Road (Victoria West)	B.C. 16-371.....	Gates in lowered position and crossing gong sounding. As signalman saw taxi was taking no heed of gates he threw semaphore against yard engine he was protecting to avoid an accident. Taxi crashed into gate breaking the barrier.
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## KETTLE VALLEY RAILWAY

Nil

## TORONTO, HAMILTON AND BUFFALO RAILWAY

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Aug. 16....	.....	Wentworth St., Hamilton, Ont.	24-851C.....	Crowding over in front of C.N.R. passenger train.
Sept. 6....	2.05 p.m...	Steele St., Port Col- borne, Ont.	551103-C.....	Driver stopped and started to gain, apparently intending to cross ahead of train, but auto stalled and engine struck truck; very little damage.
Oct. 28....	9.20 a.m...	River Road Crossing, Welland, Ont.	Mich. 728-695...	Drove on westbound track in front of train; backed off track just clearing same as engine passed. Engineer applied emergency brakes and stopped about two coach lengths over crossing.
Dec. 17....	6.50 p.m...	Ontario Road Crossing, Concessions 6 and 7, Lot 24, Welland, Ont.	HS-804.....	Auto drove into side of freight train; driver injured.
" 19....	11.00 p.m...	Canboro Road Crossing, west of Fenwick, Ont.	HC-523.....	Auto stalled on track and struck by extra; occupants escaped.

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# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, January 15, 1931

No. 24

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, \$3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

*In the matter of the Order of the Board No. 42530, dated April 29, 1929, as amended, and the application of the Canadian National Railways that the said Order be amended so as to provide that the industrial spur to be built for the Gebo Coal Company, be maintained by the said company until such time as that company is fully reimbursed by way of rebate, when the spur will become the property of the railway company.*

File 31531.1.1.

### JUDGMENT

VIEN, DEPUTY CHIEF COMMISSIONER:

By its Order No. 42530 dated April 29, 1929, this Board granted the application of the Gebo Coal Company, and directed the Canadian National Railway Company to build, under the provisions of section 185 of the Railway Act, the industrial spur applied for, and to operate it in good working order and condition, for the purposes of the Gebo Coal industry.

On February 11, 1930, the Canadian National Railways applied for an order directing that this spur be maintained at the expense of the Gebo Coal Company, until such time as that company is fully reimbursed, and the spur becomes the property of the railway company.

This matter was heard at Edmonton August 4, 1930. (Record vol. 565, p. 4221 et s.)

The railway company urges that, inasmuch as under the provisions of section 185 of the Railway Act, the spur remains vested in the applicant coal company, until the full repayment by the railway company to such applicant, of all the expenses incurred for the construction of the said spur, by way of rebate out of and in proportion to the tolls charged by the railway company for the carriage of traffic over the said spur, the applicant should maintain its spur. No exception was taken to this application.

Following the precedent established by the Board in *Bienfait Commercial Co. v. C.P.R. Co.* (23, C.R.C., p. 62), this application of the Canadian National Railways should, in my opinion, be granted, and an order made to provide that pending full repayment by the railway company to the industry of the cost of construction of this spur, the said spur be maintained on the basis of the specifications approved by the Board for its construction, and that such maintenance be borne by the Gebo Coal Company.

OTTAWA, January 2, 1931.

Commissioners Norris and Stoneman concurred.

## ORDER No. 46057

*In the matter of the Order of the Board No. 42530, dated April 29, 1929, as amended by Order No. 44239, dated January 24, 1930, and Order No. 44366, dated February 19, 1930, directing the Canadian National Railways to construct, maintain, and operate a branch line for the Gebo Coal Company, Limited, at Luscar, Alberta.*

*In the matter of the application of the Canadian National Railways that the said Order No. 42530, be amended so as to provide that the industrial spur to be built for the Gebo Coal Company, Limited, be maintained by the said company until such time as that company is fully reimbursed by way of rebate, when the spur will become the property of the Railway Company;*

*And in the matter of the Order of the Board No. 45195, dated August 4, 1930, directing the Canadian National Railways to commence the construction of the said branch line to be completed within ninety days from the date of such order.*

File No. 31531.1.1.

WEDNESDAY, the 7th day of January, A.D. 1931.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Edmonton, Alberta, August 4, 1930, in the presence of counsel for and representatives of the Canadian National Railways, the Luscar Collieries, Limited, and the Gebo Coal Company, Limited, and what was alleged,—

*The Board Orders:* That, pending full repayment by the Canadian National Railways to the Gebo Coal Company, Limited, of the cost of construction of the said spur, such spur be maintained on the basis of the specifications approved by the Board for its construction, and that such maintenance be borne by the Gebo Coal Company, Limited.

THOMAS VIEN,  
*Deputy Chief Commissioner.*

## ORDER No. 45987

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 256 of the Railway Act, for authority to construct an interchange track (required to be constructed under Order No. 45769, dated November 14, 1930) across Ida Street (unopened), Norma Street, Charlotte Street (unopened), and the road allowance between Lots 5 and 6 on the line between the Town of Arnprior and the Township of McNab, as shown on the plan and profile dated November 21, 1930, on file with the Board under file No. 6713.52.*

FRIDAY, the 12th day of December, A.D. 1930.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board, and the consents of the Town of Arnprior and the Township of McNab, filed,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to construct an interchange track across Ida street (unopened), Norma



street, Charlotte Street (unopened), and the road allowance between lots 5 and 6 on the line between the town of Arnprior and the township of McNab, as shown on the said plan and profile on file with the Board under file No. 6713.52; the crossings of Norma street and the road allowance to be constructed in accordance with "The Standard Regulations of the Board Affecting Highway Crossings."

H. A. McKEOWN,  
Chief Commissioner.

ORDER No. 45993

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 22nd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 857, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 857, approved herein, are as follows, namely:—

From	Rates in cents per 100 pounds
Yarmouth, N.S.}	
Hebron, N.S.} . . . . .	46½
Ohio, N.S. . . . .	
Brazil Lake, N.S.}	45
Hectanooga, N.S.} . . . . .	
Meteghan, N.S. . . . .	43
Church Point, N.S.} . . . . .	
Weymouth, N.S. . . . .	42
North Range, N.S. . . . .	39½
Digby, N.S. . . . .	38
Bear River, N.S.} . . . . .	
Deep Brook, N.S. . . . .	36
Clementsport, N.S. . . . .	35½
Annapolis Royal, N.S. . . . .	34
Round Hill, N.S. . . . .	31
Tupperville, N.S. . . . .	31
Bridgetown, N.S. . . . .	29½
Paradise, N.S. . . . .	28
Lawrencetown, N.S.} . . . . .	
Middleton, N.S.} . . . . .	25
Wilmot, N.S. . . . .	24
Kingston, N.S. . . . .	24
Auburn, N.S. . . . .	21
Aylesford, N.S.} . . . . .	
Berwick, N.S. . . . .	20
Waterville, N.S.} . . . . .	
Cambridge, N.S.} . . . . .	18
Coldbrook, N.S. . . . .	15½

From	Rates in cents per 100 pounds
Kentville, N.S. . . . .	15
Port Williams, N.S. . . . .	15½
Wolfville, N.S. . . . .	18
Grand Pre, N.S. . . . .	
Horton Landing, N.S. . . . .	
Avonport, N.S. . . . .	19
Hantsport, N.S. . . . .	21
Falmouth, N.S. . . . .	24
Windsor, N.S. . . . .	
Newport, N.S. . . . .	25
Ellershouse, N.S. . . . .	26½
Mount Uniacke, N.S. . . . .	29½
Brooklyn, N.S. . . . .	26½
Scotch Village, N.S. . . . .	
Mosherville, N.S. . . . .	28
Clarksville, N.S. . . . .	29½
Kennetcook, N.S. . . . .	31
South Maitland, N.S. . . . .	35½
Clifton, N.S. . . . .	38
Mill Village, N.S. . . . .	12½
Centreville, N.S. . . . .	
Sheffield Mills, N.S. . . . .	
Hillaton, N.S. . . . .	
Canning, N.S. . . . .	15
Billtown, N.S. . . . .	
Lakeville, N.S. . . . .	
Woodville, N.S. . . . .	15½
Grafton, N.S. . . . .	
Somerset, N.S. . . . .	18
Weston, N.S. . . . .	

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 45994

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of  
the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 22nd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 11 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Supplement No. 11 to Tariff C.R.C. No. 811, approved herein, are as follows:—

	Rates in cents per hundred pounds
Item 55 . . . . .	6½
Item 60 . . . . .	9½

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45995

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 22nd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said Tariff C.R.C. No. 856, approved herein, are as follows:—

Item	Rates in cents per hundred pounds	
	Carloads	Less than carloads
Item 35 . . . . .		47
Item 90, Annapolis to Yarmouth, N.S. . . . .		34½
Item 150, Windsor Junction to Bridgetown, N.S. . . . .	5½	
Item 260 . . . . .	19½	
Item 305, Bridgetown to Inverness, N.S. . . . .	12½	14

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45996

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 22nd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item 6 of Supplement No. 10 to Tariff C.R.C. No. 815, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 6 of Supplement No. 10 to Tariff C.R.C. No. 815, approved herein, is the seventh class rate in effect prior to July 1, 1927.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 45997

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 22nd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the toll published from Berwick, Nova Scotia, in item 11A of Supplement No. 2 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 11A of Supplement No. 2 to Tariff C.R.C. No. 856, approved herein, is 15 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 45998

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 22nd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published in item 11 of Supplement No. 1 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 11 of Supplement No. 1 to Tariff C.R.C. No. 856, approved herein, are as follows:—

From	Rates in cents per 100 pounds
Lawrencetown, N.S. . . . .	14
Aylesford, N.S. . . . .	14

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46002

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

MONDAY, the 22nd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Tariff C.R.C. No. 858, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been charged in lieu of those published in the said Tariff C.R.C. No. 858, approved herein, are as follows:—

From	Rates in cents per 100 pounds
Yarmouth, N.S. . . . .	
Hebron, N.S. . . . .	
Ohio, N.S. . . . .	45
Brazil Lake, N.S. . . . .	
Hectonooga, N.S. . . . .	
Meteghan, N.S. . . . .	43
Church Point, N.S. . . . .	42
Weymouth, N.S. . . . .	39½
North Range, N.S. . . . .	38
Digby, N.S. . . . .	36
Bear River, N.S. . . . .	35½
Deep Brook, N.S. . . . .	
Clementsport, N.S. . . . .	34
Annapolis Royal, N.S. . . . .	31
Round Hill, N.S. . . . .	29½
Tupperville, N.S. . . . .	28
Bridgetown, N.S. . . . .	
Paradise, N.S. . . . .	26½
Lawrencetown, N.S. . . . .	25
Middleton, N.S. . . . .	24
Wilmot, N.S. . . . .	21½
Kingston, N.S. . . . .	20
Auburn, N.S. . . . .	18
Aylesford, N.S. . . . .	
Berwick, N.S. . . . .	15½
Waterville, N.S. . . . .	
Cambridge, N.S. . . . .	15
Coldbrook, N.S. . . . .	
Kentville, N.S. . . . .	
Wolfville, N.S. . . . .	12½
Grand Pre, N.S. . . . .	
Horton Landing, N.S. . . . .	
Avonport, N.S. . . . .	
Hantsport, N.S. . . . .	15
Falmouth, N.S. . . . .	
Windsor, N.S. . . . .	15½
Newport, N.S. . . . .	
Ellershous, N.S. . . . .	20
Mount Uniacke, N.S. . . . .	24
Brooklyn, N.S. . . . .	
Scotch Village, N.S. . . . .	20
Mosherville, N.S. . . . .	21½
Clarkville, N.S. . . . .	24
Kennetcook, N.S. . . . .	26½
South Maitland, N.S. . . . .	31
Clifton, N.S. . . . .	34
Mill Village, N.S. . . . .	
Centreville, N.S. . . . .	12½

From	Rates in cents per 100 pounds
Sheffield Mills, N.S.}	15
Hillaton, N.S. ....}	
Canning, N.S.}	15½
Kinsport, N.S.}	
Billtown, N.S. ....}	15
Lakeville, N.S. ....}	15½
Woodville, N.S. ....}	
Grafton, N.S. ....}	
Somerset, N.S. ....}	18
Weston, N.S. ....}	

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 46007

*In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic its Kootenay Landing to Proctor Branch, mileage 00 to 34·6.*

File No. 36724.4

WEDNESDAY, the 24th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by the Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its Kootenay Landing to Proctor Branch, mileage 00 to 34·6, the speed of trains not to exceed 25 miles an hour.

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 46041

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 30th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement 13 to Tariff C.R.C. No. E-1238, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 46054

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:*

File No. 34822.2

TUESDAY, the 30th day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely:—

Supplement 13 to Tariff C.R.C. No. E-1228  
 Supplement 40 to Tariff C.R.C. No. E-1237  
 Supplement 14 to Tariff C.R.C. No. E-1247

H. A. McKEOWN,  
*Chief Commissioner.*

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT,  
 BOARD OF RAILWAY COMMISSIONERS, FOR THE MONTH  
 OF OCTOBER, 1930

Railway accidents .....213, involving 29 persons killed and 193 injured.  
 Railway accidents at highway crossings.... 37, involving 5 persons killed and 49 injured.

	Killed	Injured
Passengers.....	1	21
Employees.....	8	143
Others .....	25	78
	<u>34</u>	<u>242</u>

## DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

## PROVINCE OF NOVA SCOTIA

## Accidents

- 1 Automobile—Ran into side of train: licence N.S. 60-770.
- 1 Automobile—Auto driver's attention centred on men working on new station: licence N.S. 45681.
- 2 Automobile—N.S. licences C-12665, 16102.

## PROVINCE OF NEW BRUNSWICK

- 1 Automobile—Ran into side of train: N.B. licence 28858.
- 1 Automobile—Excessive speed of auto: N.B. licence 2931.

## PROVINCE OF QUEBEC

- 1 Automobile—Ran into side of train: Que. licence 112-244.
- 3 Automobile—Failed to stop for crossing: Que. licences 35765, F-15299, T-832.
- 1 Automobile—Stalled on crossing: Que. licence 46426.
- 1 Bicycle.
- 1 Buggy.

## PROVINCE OF ONTARIO

## Accidents

- 5 Automobile—Ran into side of train: Ontario licences BS-394, HW-49, DM-943, MX-705; Conn. Y-11-208.
- 1 Automobile—Stalled on crossing: Ontario licence 61-7650.
- 1 Automobile—Driver of automobile under influence of liquor: Ontario licence HB-687.
- 5 Automobile—Ontario licences CA-363, J-2378, C-855, 37028C; Michigan 404-666.
- 1 Automobile—Licence number not obtained.
- 1 Steam roller.
- 2 Wagons.
- 1 Pedestrian.

## PROVINCE OF MANITOBA

- 1 Automobile—Excessive speed of auto: licence Man. 18-302.
- 2 Automobile—Licences Man. 29-714; Man. 19-669.

## PROVINCE OF SASKATCHEWAN

- 1 Automobile—Stalled on crossing: licence Sask. 41-789.
- 1 Automobile—Licence Sask. 70-623.

## PROVINCE OF ALBERTA

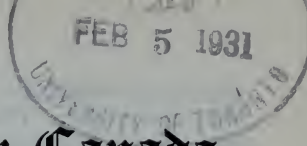
- 1 Wagon.

## PROVINCE OF BRITISH COLUMBIA

- 1 Automobile—Ran into side of train: licence B.C. 21322.

Of the thirty-seven accidents at highway crossings, four occurred at protected crossings and thirty-three at unprotected crossings. Twenty-one of the accidents occurred during daylight hours and sixteen during the night hours.

OTTAWA, January 7, 1931.



# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

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No. 25

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*Application of the Denison Tile Company, Limited, Windsor, Ont., for an Order directing the railway companies to establish on drain tile in straight carloads; also on mixed carloads of drain tile and hollow building tile, the special commodity rates (lower than the normal commodity mileage scale of rates) concurrently in force on hollow building tile.*

File 32844.4

### JUDGMENT

#### THE CHIEF COMMISSIONER:

By its communication to the Board under date of April 10, 1930, applicant complains that while the Canadian Freight Association has recently reduced the mileage rates on drain tile to the same figures as on building tile, it will not permit the former to be shipped on the building tile commodity rates, and is applying for uniform rates on drain tile and building tile.

Answer to the application was filed by the Canadian Freight Association, and the matter was set down for hearing at Windsor, Ont., on October 31, 1930, at which Mr. Hallett, president of the Denison Tile Company, appeared in person in support of the application.

As presented to the Board, it is clear that a general reduction in drain tile rates throughout eastern Canadian territory is not involved, but the application is limited specifically to a request that there be established on drain tile the same rates as published on building tile in those instances where specific rates are established on the last-named article lower than the mileage scale of rates, and by this restriction the matter is limited to comparatively few destinations as hereinafter pointed out.

Drain tile and hollow building tile, as well as brick of various kinds and many other kindred articles are rated 10th class in carloads in the Canadian Freight Classification, which is the lowest rating therein. Notwithstanding such low rating, these commodities with many others in the same class usually move under special commodity rates very much lower than the class rate. In the territory here in question, these special commodity rates which apply to a large list of articles, are published in the form of mileage rates, with the result that regardless of the point of origin or destination, or the direction of the movement, there is a uniform rate of general application for the same distance. But these commodities do not all move on the same mileage scale of rates. Those on gravel and building sand are lower than the mileage scale upon moulding-sand and silica sand. A somewhat higher scale applies to plaster blocks, fire



clay and roofing tile, while the scale applying on sewer pipe is somewhat higher than the latter. The various articles are segregated into groups and there are some dozen varying mileage scales applicable thereon.

In its presentation to the Board, applicant has referred to the fact that until recently there was a different mileage scale applicable on drain tile from that applying on building tile. But it is to be noted that, effective in April, 1930, the carriers amended their tariff by placing drain tile and hollow building tile in the same group, with the result that, except for some short hauls, the mileage rates on drain tile, which were previously somewhat higher than those published on building tile, were reduced. These special commodity rates represent a substantial reduction from the 10th class rates, as shown by the following comparison:—

Miles	Standard	Schedule	Commodity
	10th Class	"A" 10th Class	Mileage Rates
Rates in cents per 100 lbs.			
25	9½	9½	7½
50	12½	12½	9½
75	18	16½	11
100	19½	18	12½
150	25	22	14
200	29	24	15½
250	32	27½	16½
300	36½	29	17½
350	40	29	19½
400	41½	32	20½

Besides the special commodity rates which are published in the form of mileage scales, the tariff shows many specific rates established on certain commodities other than drain tile, from and to explicitly named points, which rates are lower and form an exception to the mileage rates. But being published as specific rates, the amount of such reduction below the mileage scale is not apparent and, doubtless, varies in different cases according to circumstance. The request of the applicant is that when specific commodity rates (lower than the commodity mileage scale) are published on hollow building tile from points at which its plants are located, such rate should also apply on drain tile in straight carloads as well as on mixed carloads of drain tile and hollow building tile. The points at which applicant manufactures drain tile are not named, but from its letter-head its plants are shown as being at Tilbury, Fletcher and Belle River, Ontario.

In reply to the application the carriers have stated that drain tile is moving continually in straight carloads from many points in Ontario and Quebec at the current mileage rates, under which all shippers pay the same rate for the same distance, and point out that by establishing a lower basis of rates from applicant's manufacturing points, unjust discrimination against other manufacturers of drain tile throughout eastern Canada would result. They also state that a general reduction on drain tile would involve serious loss in revenue which they cannot afford to sustain. They point out that many shippers of drain tile do not manufacture building brick or hollow building tile, that they ship the product of their factories in straight carloads, and would be placed at a disadvantage and discriminated against, if applicant were granted a basis of rates on mixed carloads of drain tile and hollow building tile lower than the rate applicable on straight carloads of drain tile from all other shipping points.

It may be pointed out that when the mileage scale of rates on drain tile was changed in April, 1930, as above referred to, the tariffs at the same time provided that drain tile and hollow building tile could be shipped in mixed carloads at the same mileage rates as provided on straight carloads, whereby applicant now has the privilege of shipping at a low rate carloads of mixed tile where possibly it might be difficult to make up a straight carload.

Relative to the number of drain tile manufacturers who do not also manufacture brick and building tile, the applicant stated:—

“ There is not one manufacturer in fifty who manufactures drain tile to the exclusion of brick and building tile. In fact, the writer does not know of anyone in Ontario who does manufacture drain tile exclusively. Possibly there are certain manufacturers who have not developed a shipping business in building tile and brick, depending on their local market for consumption of same while shipping a few straight cars of drain tile to outside points.”

In reply to the foregoing, as shown on page 6881 of the record of the sittings of the Board at Windsor in this application, on October 31, Chairman Ransom of the Canadian Freight Association, on behalf of the carriers, states:—

“ Page 6881—wherein Mr. Hallett takes exception to the statement that we have made, that there were many manufacturers of drain tile that were not making hollow building tile. In support of our statement, we would respectfully refer the Board to the Canadian Trade Index for the year 1930, published by the Canadian Manufacturers' Association, from which you will observe from pages 629 and 630 that there are 42 manufacturers of drain tile in Ontario and Quebec of which only 8 are manufacturing hollow building tile, and the total manufacturers of hollow building tile in Ontario and Quebec is 14, as compared with the 42 manufacturing drain tile ”.

With regard to the specific commodity rates below the mileage scale, the carriers stated:—

“ The specific commodity rates on building brick and hollow building tile from different manufacturing points to some of the large centres such as Toronto, Ottawa, Ont., and Montreal, P.Q., are really in the nature of competitive rates owing to local manufacture or truck competition from nearby points. The fact that we have found it advisable to establish specific commodity rates on hollow building tile is, in itself, no reason why the same should be established on drain tile, as they are not competitive one with the other ”.

And the applicant responds that:—

“ Every little plant in the country is making drain tile, and every drain tile that is sold to the farmer is, of necessity, sold on a highly competitive basis ”.

While there is no competition between drain tile and hollow building tile, they being used for entirely different purposes, there may be force to the contention of the applicant that drain tile, by itself, is marketed in competition with local manufacturers, and under competitive conditions similar to those existing in the marketing of building tile. The establishment of rates to meet various competitive conditions is clearly in the discretion of the railway companies, subject to the provisions of the Railway Act regarding discrimination, and they are not compelled to put in or maintain rates to meet such competition.

Applicant has contended that because drain tile is a low priced commodity, lower rates are necessary to enable its wider distribution, but there is no testimony leading to the conclusion that the rates, in themselves, are unreasonable for the service performed by the carriers, or when compared with the rates on other kindred articles, as distinguished from such rates as may be classed as competitive. Being a low priced commodity, it must follow that it is difficult to market the same at distant points, as against a manufacturer located in proximity to such market. We have no information showing the area within which the applicant at present distributes his drain tile.



No evidence having been submitted as to the specific rates established from applicant's plants on building tile which it asks be also established on drain tile, it was necessary to make an examination of the tariffs to ascertain what is involved in the application as here presented. Below will be found the specific rates published in the tariff of the Canadian Pacific Railway on building tile from Tilbury and Belle River, also showing for comparative purposes, the rates applicable on drain tile under the mileage scale:—

To	From Tilbury, Ont.		To	From Belle River, Ont.	
	Specific rate on Building Tile	Mileage rate on Drain Tile		Specific rate on Building Tile	Mileage rate on Drain Tile
Brockville, Ont. . . . .	19½	21½	Brockville . . . . .	20	21½
Cornwall, Ont. . . . .	19½	24½	Cornwall . . . . .	20	23½
Hull West, Que. . . . .	19½	21½	Hull West . . . . .	20	23½
Montreal, Que. . . . .	19½	24½	Montreal . . . . .	20	24½
Ottawa, Ont. . . . .	19½	21½	Ottawa . . . . .	20	23½

It will be observed from the foregoing that it is only to destinations Brockville to Montreal, Ottawa and Hull West, that there is a departure from the mileage scale of rates on building tile and the reductions made from the mileage scale range from 1½ cents to 5 cents per 100 pounds.

The tariff of the Canadian National Railways shows that it duplicates the above rates from Belle River; Tilbury is not a point on this railway.

The tariff of the Michigan Central Railroad duplicates the above rates from Tilbury; Belle River is not a point on this line. The Michigan Central Railroad also publish a specific rate of 15½ cents from Tilbury to Toronto, but this simply represents the mileage rate via the Canadian Pacific Railway between the same points. The Michigan Central Railroad also publish specific rates from Tilbury to North Bay, Sudbury and Sault Ste. Marie, but here again, these rates are merely based on the mileage scale applying between the same points via the Canadian Pacific Railway, consequently, the latter company publishes no specific rates between these points, the movements over that line being subject to the mileage scale. The Michigan Central Railroad also publish a specific rate of 35 cents on building tile from Tilbury to Isle Maligne, Lavoie, Riverbend and St. Joseph d'Alma, P.Q. These destination points are located in Northern Quebec on the Alma and Jonquiere Railway, but this rate is not lower than the single line mileage scale for the distance between these points, it is, in fact, 2 cents higher.

The above are quoted in order to show that specific rates lower than the mileage rates are confined to a very limited area in Eastern Canada, namely, Brockville to Montreal and Ottawa. We have nothing before us to show the points from which drain tile moving into this area is being shipped; whether the applicant has been and is shipping drain tile into this territory, or whether it would be able to do so, if the reduction in rates requested were granted. Even under the latter circumstance, applicant might not be able to successfully compete with drain tile manufacturers, whose plants are located adjacent to these destination points, for contiguous to this territory there are drain tile manufacturers at Peterborough, Arnprior, Kemptville, Renfrew, Ottawa, Napanee, Picton and Winchester, Ont., whose shipments are moving under the mileage scale.

Applicant contends that where a contractor desires a mixed carload of building tile and drain tile, he should not be compelled to pay a higher rate on the part car of building tile than when it is shipped in straight carloads; or in other words, that the rate for the mixed carload should be based on the lowest rated article in the shipment. It has already been pointed out that since April 19, 1930, drain tile and building tile may be shipped in mixed carloads at the same rate under the mileage scale, and it is only to the limited territory to which



there are lower specific rates on building tile that there is any difference in rate on the two commodities, and in these cases the tariffs provided that mixed carloads will be charged at the rate applicable to the highest rated article, pursuant to the provisions of rule 10 of the Canadian Freight Classification, which rule applies generally to all freight traffic both in Canada and the United States.

“The principle of the classification rule that when a number of different articles for which carload ratings are provided are shipped in a mixed carload they will be charged at the carload rate applicable to the highest classed article and the minimum carload weight will be the highest provided for any of the articles in the carload, is a principle of long standing in Canada as well as throughout the United States. The mixed carload rule, in substance, permits the application of the carload rating on an article forwarded in less than carload quantities.”

(Proposed Canadian Freight Classification No. 17, Vol. 15, Board's Judgments, Orders and Rulings, p. 210).

As the mixed carload rule is a concession permitting the application of a carload rating on different articles forwarded in less than carload quantities in the same car, it would be discriminatory to authorize a lower rate on a less than carload quantity of an article included in a mixed carload with other articles than applies when the same article is shipped by itself in full carload quantities.

Bearing upon the position of other manufacturers of drain tile, there is quoted below a letter addressed to the Board dealing with the subject matter of this application, by the Dochart Brick, Tile and Terra-Cotta Works, Arnprior, Ont., as follows:—

“We understand that you have before you for consideration, an application of the Denison Tile Company, Limited, Head Office, Windsor, Ont., asking that your Board authorize the application of brick and building tile commodity rates on shipments of drain tile or mixed cars of drain tile and hollow building tile from Tilbury.

“As manufacturers of drain tile, we strongly object to the application of the Denison Tile Company being approved, because if this is done, it will take away from us the geographical advantage which we now enjoy on shipments destined to Ottawa and Montreal, where we dispose of the greater proportion of our drain tile and on which we pay mileage rates.

“On the other hand, the applicants have a decided advantage on shipments destined to points in western Ontario, particularly Toronto and west, and, as that particular section of the country takes by far the greater proportion of the drain tile manufactured in eastern Canada it would be decidedly unfair to give our competitors located in western Ontario, the advantage of commodity rates into eastern Ontario and to the province of Quebec and we trust that your Board will not grant the application”.

References made by applicant to rates on drain tile in the United States, in which its “investigation resulted in disclosing that throughout the drain tile producing area, special rates on drain tile are as general as on brick and building tile, and that mixing privileges of these commodities are allowed under the special rates,” not inaptly describe the rate situation in Canada as well, for there are special commodity mileage rates applying on drain tile, brick and building tile, which can be shipped in carloads.

Without information as to the circumstances and conditions surrounding the establishment of particular rates, no satisfactory conclusion can be drawn from a comparison of rates between points of origin and destination in the United States, as illustrated by applicant. They furnish no evidence of unreasonableness of the rates in this country, and are no criteria thereof. Many judgments of the Board decide this. See Vol. 17, Board's Judgments, Orders and

Rulings—Application of Consumers Glass Company, Montreal, page 726, at pages 731 to 733; also Riley vs. Dominion Express Company, 17 Canadian Railway Cases, 112, page 115; *In re* Telegraph Tolls, Canadian Railway Cases, Vol. 20, 1, at page 6.

Inasmuch as reference has been made to rates on drain tile in the United States, it may be noted that in a case decided September 23, 1930, 168 I.C.C., 23, the Interstate Commerce Commission dealt with rates on drain tile from Coffeyville, Kansas, to destinations in Kansas, Missouri, Oklahoma, Arkansas, Texas and Louisiana. In this case the Commission stated:—

“In National Paving Brick Mfrs. Asso. v. A. and V. Ry. Co., 68 I.C.C. 213, we prescribed a uniform brick list, comprising face, fire, and paving brick, hollow building tile, and other specified clay products of similar transportation characteristics under which such articles should be accorded equal rates from and to the same points for interstate transportation, in carloads, throughout the United States east of the Rocky mountains, minimum not exceeding 60,000 pounds, marked capacity of car to govern if less than the minimum. Flue lining, drain tile, sewer pipe, and like articles were specifically excluded from the list.”

It is also shown therein that the rates on drain tile were substantially higher than the scale prescribed by the Interstate Commerce Commission for application to articles in uniform brick list which includes hollow building tile. The Commission further stated:—

“Complainant asks that the brick scale be applied on straight carloads of drain tile, minimum 40,000 pounds; and on straight carloads of drain tile, minimum 30,000 pounds, 1 cent higher than such scale. Alternative bases are generally undesirable in that they are liable to deprive the carriers of reasonable carload revenue, entail wasteful use of equipment, and complicate the rate structure and the process of computing freight charges. We see no reason for prescribing alternative rates on this commodity.”

Complainant also asks that the brick scale be applied on mixed carloads of drain tile with articles in the uniform brick list. This means a minimum of 60,000 pounds with no limit to the amount of drain tile in the mixture. The demand for mixed carloads is said to arise from the fact that builders and dealers when purchasing hollow building tile or brick for construction work frequently order a small quantity of drain tile for draining basements and around foundations. Defendants take the position that drain tile, because of its major use in draining and irrigating lands, does not compete with brick and related articles, is not used for the same purposes as those commodities, and that consequently there is no proper reason for the mixture sought. They contend that the classification minimum of 26,000 pounds is sufficiently low to take care of demands for small quantities. The record is not persuasive that we should prescribe mixed carload rates or rules on drain tile with articles in the uniform brick list and our findings will therefore be limited to rates on drain tile in straight carloads.”

“In certain cases we have prescribed rates on drain tile made differentially over the rates on brick. See *Mason City Brick & Tile Co. v. Director General*, 107 I.C.C. 702, involving rates on drain tile from certain Iowa points to interstate destinations in Iowa, Nebraska, South Dakota, and Minnesota; and *Ochs Brick and Tile Co. v. Chicago and N.W. Ry. Co.*, 159 I.C.C. 511, involving rates on drain tile from certain Minnesota points to destinations in North Dakota. We are unwilling to prescribe such a relationship on drain tile in the southwest.”



Upon consideration of the record in that case, the Commission prescribed a modification in the mileage scale of rates on drain tile, which made some reduction in the scale in force, but the scale of rates there prescribed by the Commission is appreciably higher than the scale applying in the same territory on building tile under the uniform brick list. The mileage scale there prescribed by the Commission on drain tile is, for hauls over 100 miles, somewhat higher than the present Canadian mileage scale for the same distance.

Upon consideration of the record in the present case, it does not appear that the rates assailed are shown to be unreasonable, or unjustly discriminatory and, therefore, the application should be dismissed.

Commissioner Norris concurred.

January 2, 1931.

*Application of the Transportation Commission of the Maritime Board of Trade for an order directing the Canadian National Railways to publish tariffs of rates from Saint John, N.B., to stations west of Diamond Junction or Levis, accurately conforming with the Maritime Freight Rates Act, 1927.*

File 34822.33

### JUDGMENT

#### THE CHIEF COMMISSIONER:

Since the Maritime Freight Rates Act, 1927, came into force, questions have arisen between the Transportation Commission of the Maritime Board of Trade and the railways, concerning the method proper to be pursued in arriving at the correct computation in regard to the deductions provided by the Act. Although the views of this Board have been made known in various letters and memoranda sent to the parties in interest, nevertheless for the purpose of finally determining the question at issue on the record, the matter was set down for hearing at Saint John, N.B., on the application of the Transportation Commission of the Maritime Board of Trade, and full argument had upon all phases of the various points at issue in an application for an order of the Board directing the Canadian National Railways to: "Publish a tariff or tariffs of through rates from Saint John, N.B., to stations west of Diamond Junction or Levis, Que., accurately conforming with the Maritime Freight Rates Act, 1927." The written application specified rates from Saint John, N.B., only, but as developed at the hearing of the application at the sitting of the Board in Saint John on September 30, 1930, it embraces all points in the territory designated as "Eastern Lines" in section 2 of the Maritime Freight Rates Act.

Briefly summarizing what is here in issue, the Board is asked to interpret the provisions of the Maritime Freight Rates Act with respect to their application to tariffs publishing through rates from points on the "Eastern Lines" westbound to points in Canada beyond the limit of the "Eastern Lines," and counsel for the applicants stated there are three methods of computation to be considered:—

- (1) That of the Board's letter of 13th December, 1928.
- (2) That adopted by the Canadian National Railways.
- (3) That advocated by the Maritime Transportation Commission as the true intent of the Duncan Commission as implemented by the legislation.

Two rulings of the Board are referred to, one to the effect that an approximate 20 per cent reduction under the Maritime Freight Rates Act should be limited to a reduction of not less than 19·5 per cent and not more than 20·5 per cent; or in other words, that the words in the Act "approximately 20 per cent" meant within one-half of 1 per cent. The other ruling is contained in the



Board's letter of December 13, 1928, addressed to Mr. Porter, counsel for the applicants, which reads as follows:—

“Referring to your letter of the 7th instant, I am directed to state that after very mature consideration, the Board decided that in calculating the twenty per cent reduction provided by the Maritime Freight Rates Act, with respect to traffic moving outward, westbound, all rail from points on the eastern lines westward to points in Canada beyond the limit of the eastern lines, the proper method of calculation is, that the distance from point of origin to point of destination should be compared with the distance from point of origin to Diamond Junction and the through rate proportionately divided on the basis of these two distances, and from the whole rate a twenty per cent reduction to be made on the proportion attributable to the haul from the point of origin to Diamond Junction. Considering sections 3 and 4, this seems to the Board to be the proper way of calculating the twenty per cent reduction upon the eastern lines proportion of the through rate. Calculations made otherwise would not, in the opinion of the Board, be based upon a correct interpretation of the Act.

“I am further directed to state that the construction of rates on a basis of fifty-mile blocks, referred to in the last paragraph of your letter, has prevailed for many years, and it does not appear that, as regards the provisions of the Maritime Freight Rates Act, any material disadvantage arises from its continuance, or that it is in contravention of the letter or spirit of the Act.”

In exhibits 1 to 7 inclusive, applicants have set up a great many computations showing the rates in effect prior to July 1, 1927; the rates published effective on that date, under the method employed by the Canadian National Railways, and what they contend the rates should be based on their interpretation of the rulings of the Board, and indicating a difference as between the two.

Adverting, first, to the ruling defining the words “approximately 20 per cent.” Previously, at Board meeting on May 30, 1927, the Board considered the disposition of fractions of rates in the working out of the new tariffs under authority of the Maritime Freight Rates Act, and the Canadian National Railways were advised that with respect to class rates, these might, for the purpose of simplification of tariffs, be made in whole figures only, fractions of  $\cdot 01$  to  $\cdot 49$  to be dropped and  $\cdot 50$  to  $\cdot 99$  to be added as the next even figure except in cases where to even up a scale, the fraction of an even  $\cdot 50$  could be either dropped or added where it seemed desirable. With regard to commodity rates, the Board decided that rates of 25 cents and over might be made in whole figures with the same disposition of fractions as in the case of class rates; commodity rates under 25 cents to be continued with fractions of not less than one-half cent with disposition of fractions as follows:—

Fractions of less than  $\cdot 25$  to be omitted.

Fractions of  $\cdot 25$  or greater and less than  $\cdot 75$  to be shown as one-half.

Fractions of  $\cdot 75$  or greater to be increased to the next whole figure.

Subsequent to this ruling, there were conferences between officers of the Canadian National Railways and members of the Board, at which the impracticability of complying literally with the Board's direction, and also observing the disposition of fractions of rates previously approved by the Board, was pointed out, and thereafter the Board issued orders approving the tariffs issued and filed by the railway company, subject to the provisions of subsection 2 of section 3 of the Act.

It is not possible to dispose of fractions in rates and always keep within the limit of one half either below or above 20 per cent as the following examples show:—

5TH CLASS STANDARD RATE FOR 10 MILES

Rate prior to July 1. . . . .	cents	12.0
20 per cent reduction makes rate. . . . .	cents	9.6
Published under disposition of fractions. . . . .	cents	10.0
Published rate equals reduction of. . . . .	per cent	16.7
Had class rates been published with fractions of $\frac{1}{2}$ c. rate would have been. . . . .		9.5
and this would have meant a reduction of. . . . .	per cent	20.8

OR TAKE THE 5TH CLASS RATE FOR 35 MILES

Rate prior to July 1. . . . .	cents	18.0
20 per cent reduction makes rate. . . . .	cents	14.4
Published under disposition of fractions. . . . .	cents	14.0
Published rate equals reduction of. . . . .	per cent	22.2
Had class rates been published with fractions of $\frac{1}{2}$ c. rate would have been. . . . .		14.5
and this would have meant a reduction of. . . . .	per cent	19.4

Examples similar to the above might be multiplied many times and it will be noted that when one method for disposing of fractions is followed which produces a reduction of more or less than 20 per cent, the other method simply reverses the picture, and neither comes within the limit set by the Board. The only possible manner in which an approximate 20 per cent reduction could be made, and remain within the limit provided in the Board's ruling, would be to publish the rates in these tariffs by carrying the same out to the first decimal point, but fractions of this character, namely, decimals of 1 cent in a rate, have never been adopted in Canada and would, in the opinion of the Board, be a very retrograde step in tariff construction, making the extensions of rates and accounting confusing and difficult for both shippers and carriers alike. Such a method of rate making is not asked for in this application.

With reference to the Board's ruling dated December 13, 1928, above quoted, this has been misinterpreted by the applicants and, of course, it follows from this that the rates which should have been published in conformity with the provisions of the Maritime Freight Rates Act are not those set out in their exhibits, computed, as they are, on a misinterpretation of the ruling of the Board. The proper interpretation of the Board's letter of December 13, 1928, surely involves consideration of what was before the Board in the application with respect to which said ruling was made. Upon reference thereto, it will be noted that under date of October 11, 1928, Mr. Cornell stated:—

“ We understand that, in arriving at the basis of westbound through rates as prescribed in the above mentioned section of the Maritime Freight Rates Act, the Canadian National Railways applied a basis of rates constructed on a basis of inter-regional division on a mileage pro rata built up of 50 mile blocks applying to and from Diamond Junction.”

(Underlining of words ours.)

Mr. Cornell was advised under date of November 6, 1928, in reply to his letter of October 11, that the Board's view is that the tariffs put in by the railway companies have been properly constructed. Thereafter the matter was reopened by Mr. Porter by letter dated December 7, 1928, and the last paragraph thereof reads:—

“ We note the Board's view that the tariffs put in by the railway companies have been properly constructed, and understand this to be a distinct approval of the policy of constructing rates on a basis of 50 mile blocks.”

There was another distinct question raised in this application for ruling, namely, whether what is prescribed as “ The Eastern Lines proportion of the through rate ” as set forth in Clause “ B ” subsection 1 of section 4 of the Mari-



time Freight Rates Act, meant rates constructed on a basis of inter-regional division on a mileage pro rate built up of 50 mile blocks *applying to and from Diamond Junction*, or whether the applicants were correct in their opinion that this provision of the Act defined the Eastern Lines proportion of the through rate as being the local rate in effect from point of shipment on Eastern Lines to Levis or Diamond Junction previous to July 1, 1927, and the 20 per cent reduction should have been applied upon such local rates instead of the other method of division to which reference is made. It was on this statement of the case that the Board's letter of December 13, issued; therefore, the sentence in the first paragraph thereof reading in part:—

“The proper method of calculation is, that the distance from point of origin to point of destination should be compared with the distance from point of origin to Diamond Junction and the through rate proportionately divided on the basis of these two distances, and from the whole rate a 20 per cent reduction to be made on the proportion attributable to the haul from point of origin to Diamond Junction.”

has to be considered in conjunction with the last paragraph thereof as well as what was set out in the application, namely:—

“The Canadian National Railways applied a basis of rates constructed on a basis of inter-regional division on a mileage pro rate built up of 50 mile blocks applying to and from Diamond Junction.”

(Underlining of words ours.)

and if this is done, paraphrasing the sentence in question, it would read:—

“The proper method of calculation is that the distance from point of origin to point of destination (based on 50 mile blocks to and from Diamond Junction) should be compared with the distance from point of origin to Diamond Junction (based on 50 mile blocks).”

Reference to Exhibit No. 1 shows the fine distinction that applicants have drawn in their interpretation of the Board's ruling. It is stated: “This ruling provides for a comparison of the distance to Diamond Junction with the through distance from point of origin to point of destination. The method employed by the Canadian National Railways was a comparison of the mileages to and from Diamond Junction.” In other words, while the applicants pointed out, vide Mr. Cornell's letter of October 11, 1928, that “the Canadian National Railways had applied a basis of rates constructed on a basis of inter-regional division on a mileage pro rate built up of *50 mile blocks applying to and from Diamond Junction*,” and were advised by the Board on November 6, 1928, that tariffs so published had been properly constructed, which ruling was confirmed by the Board's letter of December 13, 1928, they, nevertheless, contend there is a difference between the Board's ruling and the method employed by the railway company, but, in fact, that is not the case. Again referring to Exhibit 1 and the example therein cited, namely, the first class rate from Saint John to Montreal, under applicants' method of computation they produce a slightly lower through rate than that constructed upon the basis approved by the Board, because their method of calculation shows the total number of blocks as one less, that is to say, taking the through distance it is 13 blocks, while based on the combination of blocks to and from Diamond Junction it is 14 blocks, and while applicants credit the Eastern Lines with the full number of blocks, 10, they only allow three blocks for the carriage from Diamond Junction to Montreal, whereas the latter distance embraces four blocks. This is set out on page 4 of the exhibit which shows the distance from Saint John to Diamond Junction as 477.4 miles, or ten 50 mile blocks; that the distance from Saint John to Montreal is 634.9 miles, or thirteen 50 mile blocks, thus showing only three 50 mile blocks Diamond Junction



to Montreal whereas the distance Diamond Junction to Montreal is 157·5 miles, which is four 50 mile blocks. They then show that the Eastern Lines' proportion of the through rate would be ten thirteenthths of the former rate, equalling 77·3 cents, while the method employed by the Canadian National Railways showed the Eastern Lines' proportion as ten fourteenthths, which equals 71·8 cents, and according to their computation there is a difference of 1 cent in the through rate.

Of course, it is only in those instances where the total through distance figured on 50 mile blocks produces less than the combination or total of 50 mile blocks to and from Diamond Junction, that there is any disparity as between the two methods of calculation, and in a great many cases there is no such difference, which is illustrated by the following examples which were taken at random:—

## FROM SAINT JOHN, N.B.

To	Miles to Diamond Jct.	50 Mile Blocks	Miles to Destination	50 Mile Blocks	Total Miles	50 Mile Blocks
Cornwall.. . . . .	477.4	10	222.2	5	699.6	14
Kingston.. . . . .	477.4	10	329.7	7	807.1	17
Belleville.. . . . .	477.4	10	375.1	8	852.5	18
Toronto.. . . . .	477.4	10	488.4	10	965.8	20
Hamilton.. . . . .	477.4	10	527.2	11	1004.6	21
Brantford.. . . . .	477.4	10	548.1	11	1025.5	21
London.. . . . .	477.4	10	599.3	12	1076.7	22
Chatham.. . . . .	477.4	10	663.7	14	1141.1	23
Windsor.. . . . .	477.4	10	709.3	15	1186.7	24

## FROM HALIFAX, N.S.

Cornwall.. . . . .	645.5	13	222.2	5	867.7	18
Kingston.. . . . .	645.5	13	329.7	7	975.2	20
Belleville.. . . . .	645.5	13	375.1	8	1020.6	21
Toronto.. . . . .	645.5	13	488.4	10	1133.9	23
Hamilton.. . . . .	645.5	13	527.2	11	1172.7	24
Brantford.. . . . .	645.5	13	548.1	11	1193.6	24
London.. . . . .	645.5	13	599.3	12	1244.8	25
Chatham.. . . . .	645.5	13	663.7	14	1309.2	27
Windsor.. . . . .	645.5	13	709.3	15	1354.8	28

It will be observed that in the foregoing examples there is only a difference between the number of blocks figured on the through distance as compared with the combined number of blocks to and from Diamond Junction in three instances, namely, from Saint John to Cornwall, Chatham and Windsor.

The method of computation followed by the railway company, and already ruled upon by the Board as being proper, is as follows:—

## MILES

St. John to Diamond Jct.. . . . .	478—500 mile block.. . . . .	per cent 71 East
Diamond Jct. to Montreal.. . . . .	158—200 mile block.. . . . .	per cent 29 West

	Old Rate Cents	New Rate 20% Reduction Cents	East
East 71.. . . . .	71.4	57.1	
West 29.. . . . .	29.1	29.1	

The properly applied reduction in Eastern Lines' proportion of the first-class rate from Saint John to Montreal would make 86·2 cents. The rate published was 88 cents which is accounted for by the grouping system, which is later herein referred to. Eighty-eight cents represents a reduction in the Eastern Lines' proportion of 17·5 per cent, whereas it will be observed from page 3 of Exhibit 2 that under applicants' method of computation the reduction made was 16·17 per cent, so that this indicates with respect to this particular rate, the difference between the construction of rates on basis of 50 mile blocks to and from Diamond Junction as compared with applicants' method of computation, which is followed by them throughout all the exhibits, Nos. 1 to 7 inclu-



That the percentage of reduction varies as between the different classes 1st to 10th (Exhibit 4, page 10).

Applicants point to the anomalies as above set out as indicating: "That the ruling of the Board cannot be adhered to without disrupting the entire rate basis of all rate groups and rate-making principles." Such a statement entirely ignores consideration of what was before the Board in the application with respect to which its ruling was made. The only question dealt with in the Board's letter of December 13, 1928, was whether, in determining "The Eastern Lines' proportion of the through rate," it was proper to do so on a basis of inter-regional division on a mileage pro rate, or whether the Eastern Lines' proportion of the through rate was the local rate in effect from point of shipment on the Eastern Lines to Diamond Junction or Levis previous to July 1, 1927. What was before the Board, and covered by its ruling, did not in any way involve or embrace the question of rate groups, variations as between individual rates, or violations of the long and short haul provision of the Railway Act, which are entirely distinct matters.

Section 3 of the Maritime Freight Rates Act directed the Canadian National Railways to:—

- (a) Cancel all existing freight tariffs in respect of such preferred movements;
- (b) Substitute other tariffs for the tariffs so cancelled *showing a reduction in such tariffs* of approximately 20 per cent;

and the Board is authorized and directed to:—

- (c) Approve such cancellations and, subject to the provisions of the Railway Act, 1919, respecting tariffs of tolls for the carriage of freight, where not inconsistent with this Act, to approve all tariffs of tolls so substituted.
- (d) Maintain, or cause to be maintained, such substituted tariffs *on the general rate level* of approximately 20 per cent below the tolls or rates existing on the first day of July, 1927.

It will be noted that the Canadian National Railways were required to substitute new tariffs showing a reduction of approximately 20 per cent in such *tariffs*. There is no direction that each and every rate must be reduced approximately 20 per cent, but the *tariffs* as a whole must show such an approximate reduction. There is also the provision that such substituted tariffs will be subject to the provisions of the Railway Act where not inconsistent with the Maritime Freight Rates Act. The tariffs applying from points east of Diamond Junction to points west thereof have always been constructed under a grouping system, that is to say, the Maritime area was divided into groups and the same rate applied from all the stations in each group, although there is considerable difference in the mileage as between the west and east boundary of the group, and this was continued in the new tariffs, and, in fact, the groups were enlarged and reduced in number. To construct a common rate from all the points in the group, it obviously necessitated a matter of averaging, otherwise the points in the group nearest to Diamond Junction would receive a reduction considerably greater than 20 per cent if the most easterly point in the group had to be fixed at exactly 20 per cent, the result of which would, of course, be a reduction in the aggregate materially in excess of the approximate 20 per cent provided for by the Act; if this were not done there would be violations of the long and short haul provision of the Railway Act, as applying a strict 20 per cent reduction in the Eastern Lines' proportion would make the first-class rate to Montreal from Estcourt, 171 miles east of Diamond Junction and in the Saint John group, 90.4 cents as compared with 86.2 cents from Saint John, a point 207 miles further distant from Montreal.



The variation in the percentage of reduction as between different classes, 1st to 10th class, results from the realignment of scales used in the construction of the standard freight tariff, such scaling being also followed in the special freight tariffs. In the preparation of the new standard freight tariff for application in the Maritime Provinces, it was found that the application of a straight 20 per cent reduction would result in a variety of scales, produce inconsistencies in the gradation of same, as well as in the relationship as between the different classes, and the realignment made and the disposition of fractions in whole figures results in rates which, expressed in percentage of reduction, are both over and under 20 per cent. There are probably greater variations in percentages to be found in the rates in classes six to ten, where there is no uniform relationship between the classes, but the class rates on such traffic are relatively unimportant, because, generally speaking, the commodities taking such rates consist of low-grade traffic which moves under commodity rates and where the same variation in percentages does not exist. However, an analysis of the reductions made in each class of the standard tariff, taking the 64 scales for use locally in the select territory, shows the average reduction in each class to be as follows:—

	Per cent
In 1st class rates.. . . . .	20.00
In 2nd class rates.. . . . .	20.14
In 3rd class rates.. . . . .	20.68
In 4th class rates.. . . . .	20.25
In 5th class rates.. . . . .	19.97
In 6th class rates.. . . . .	19.95
In 7th class rates.. . . . .	19.24
In 8th class rates.. . . . .	20.00
In 9th class rates.. . . . .	19.78
In 10th class rates.. . . . .	18.90

Without here attempting to go into detail concerning all the various features of the tariff revision, the anomalies which applicants point out would follow from a strict observance of a 20 per cent reduction as applied to each individual rate or from each individual shipping point, serve to show very clearly that in giving effect to the provisions of the Maritime Freight Rates Act and the provisions of the Railway Act where not inconsistent therewith, the provision of the statute calling for a reduction in the tariffs of "approximately 20 per cent" must be given a reasonable and fair interpretation and sufficient elasticity to produce reductions in such tariffs that conform with the spirit and intention of the Act; that make a reduction in such tariffs of approximately 20 per cent; and at the same time avoid anomalies which would be inconsistent with the provisions of the Railway Act as well as unreasonable under any fair interpretation of the Maritime Freight Rates Act, and there is nothing adduced on the record here causing the Board to feel, or to find, that the tariff revision is not in conformity with a revision such as just described.

As bearing on the actual result of the revision of the tariffs pursuant to the Act, there is shown below the result of three tests made by the Canadian National Railways through their Accounting Department, which would appear to be representative of the year's run of traffic:—

STATEMENT of Traffic affected by Rate Reduction under "The Maritime Freight Rates Act, 1927" showing charges as billed and as would be on basis of rates in effect on June 30, 1927; also the proportion accruing to the Eastern Lines out of the rates in effect June 30, 1927, with the percentage of reduction in such Eastern Lines proportion.

STATEMENT covers traffic billed from July 18 to 30 inclusive, 1927, from October 1 to 14 inclusive, 1927, and from April 1 to 14, inclusive, 1928.

<i>Traffic moving wholly within territory Levis-Diamond Jct., Que., and East thereof.</i>	1927	1927	1928	Total of Three Periods
	July 18 to July 30	October 1 to October 14	April 1 to April 14	
Freight Charges—	\$182,345 55	\$208,736 62	\$188,009 07	\$579,091 24
As waybilled on reduced rates.				
As would be at rates on June 30, 1927.. . . .	228,811 34	260,988 42	235,695 19	725,494 95
Amount of reduction.. . . .	46,465 79	52,251 80	47,686 12	146,403 71
Percentage of reduction.. . . .	20.31%	20.02%	20.23%	20.18%
<i>Traffic moving from East of Diamond Jct. to points in Canada West thereof.</i>				
Freight Charges—				
As waybilled on reduced rates.	\$127,339 20	\$189,854 78	\$164,280 43	\$481,474 41
As would be at rates on June 30, 1927.. . . .	144,977 42	215,169 96	187,783 73	547,931 11
Amount of reduction.. . . .	17,638 22	25,315 18	23,503 30	66,456 70
Proportion of charges East of Diamond Jct., out of rates on June 30, 1927.. . . .	86,849 88	123,557 98	107,940 32	318,348 18
Percentage reduced charges is of Eastern Lines proportion on June 30, 1927.. . . .	20.30%	20.49%	21.77%	20.87%

## SUMMARY

Total Freight Charges—				
As waybilled on reduced rates.	\$309,684 75	\$398,591 40	\$352,289 50	\$1,060,565 65
As would be at rates on June 30, 1927.. . . .	373,788 76	476,158 38	423,478 92	1,273,426 06
Total amount of reduction..	64,104 01	77,566 98	71,189 42	212,860 41
Total proportion of charges East of Diamond Jct., out of rates on June 30, 1927	315,661 22	384,546 40	343,635 51	1,043,843 13
Percentage reduced charges is of Eastern Lines proportion as of June 30, 1927.	20.31%	20.17%	20.72%	20.39%

In this application, on the rate computation as set out by applicants, it is alleged that Saint John has not received a proper reduction under the provisions of the Act. A test similar to the foregoing was also made with respect to traffic billed from Saint John from October 1 to 14 inclusive, 1927, with the result set out below:—

STATEMENT of Traffic originating at Saint John, N.B., affected by Rate Reduction under "The Maritime Freight Rates Act, 1927" showing charges as billed and as would be on basis of rates in effect on June 30, 1927; also the proportion accruing to the Eastern Lines out of the rates in effect June 30, 1927, with the percentage of reduction in the Eastern Lines proportion.

STATEMENT covers Traffic billed from Saint John, N.B., between October 1 and 14 inclusive, 1927.

*Traffic from Saint John, N.B. to points within territory Levis-Diamond Jct., Que., and East thereof*

Freight Charges—	
As waybilled on reduced rates.. . . .	\$16,573 60
As would be at rates as of June 30, 1927.. . . .	20,642 18
Amount of reduction.. . . .	4,068 58
Percentage of reduction.. . . .	19.71%

*Traffic moving from Saint John, N.B., to points in Canada West of Diamond Jct., Que.*

Freight Charges—	
As waybilled on reduced rates.. . . .	\$ 8,592 11
As would be at rates as of June 30, 1927.. . . .	9,647 24
Amount of reduction.. . . .	1,055 13
Proportion of charges East of Diamond Jct. out of rates as of June 30, 1927.. . . .	5,229 12
Percentage of reduction in charges is of Eastern Lines proportion as of June 30, 1927.. . . .	20.18%



## SUMMARY

## Total Freight Charges—

As waybilled on reduced rates . . . . .	\$25,165 71
As would be at rates as of June 30, 1927 . . . . .	30,289 42
Total amount of reduction . . . . .	5,123 71
Total proportion of charges East of Diamond Jct. out of rates as of June 30, 1927 . . . . .	25,871 30
Total percentage of reduction in charges is of Eastern Lines proportion as of June 30, 1927 . . . . .	19.80%

At the Saint John hearing, applicants again submitted that the "Eastern Lines' proportion of the through rate" was the local rate from point of shipment on the Eastern Lines to Levis or Diamond Junction as in effect previous to July 1, 1927, and the 20 per cent reduction should have been applied upon such local rates. This is the method of computation shown as (3) in the summary of what is here in issue, given on page one hereof. Exhibit 8 was filed by applicants indicating, with respect to numerous class rates, the revised basis of rates that would be effective under this interpretation of the Act, and shows that it would involve further material reductions in rates. This question, brought up by the same parties, has, as already referred to herein, been considered by the full Board, and they were advised, first, on November 6, 1928, that the tariffs published by the railway companies had been properly constructed, and again, after a reopening of the correspondence, in the terms of the Board's letter of December 13, 1928.

It is not, of course, contended by applicants that, with respect to shipments from points on the Eastern Lines westbound to points in Canada beyond the limit of the Eastern Lines at Diamond Junction, the Act provides for a reduction of 20 per cent in the through rate. Such a contention could not, obviously, be supported by the reading of the Act, yet, as later shown herein, that would be the practical effect in connection with many rates if the construction the Board has already placed upon this provision of the Act were to be now altered and it was held that the applicants' interpretation is the proper one. On a shipment moving from Saint John to Montreal there is a through rate published which produces the earning of the railway for its haulage of 635 miles. Of this total haulage, 477 miles is the haul on the Eastern Lines, namely, Saint John to Diamond Junction, and there is a haulage of 158 miles from Diamond Junction to Montreal. Obviously, the total earning on such a shipment should be allocated so as to afford the Eastern Lines a credit for the haul in that territory, and there must be also a proportion of the revenue credited to the Central Region for the haul of 158 miles therein. The proportion that is allocated to the Eastern Lines is the Eastern Lines' proportion of the through rate and is so described, not only in the Act, but also in the Duncan Commission report (p. 22). The method of dividing or proportioning the earning on such through shipments moving over two or more regions of the railway, and which is the method that has been followed with the approval of the Board in the tariffs published pursuant to the Act, is a matter of record in the proceedings of the Duncan Commission (pages 2276 to 2280 of stenographic notes of hearing before the Duncan Commission at Montreal on September 1, 1926). With this information before it as to exactly what had always been the practice and meaning of the words "Atlantic Division proportion of the through rates," as used on page 22 of the Duncan Commission report, is it conceivable that if the Duncan Commission's recommendation contemplated some entirely different thing, or, in fact, the local rates from points on the Eastern Lines to Diamond Junction, it would not have so stated in clear and explicit language? As between different regions of one railway, or in connection with joint rates applying over two or more railways, the general principle governing the divisions of such rates has always been a mileage pro rate of the through rate on a block system of 50 miles or some other unit.



It is, therefore, fundamental and beyond dispute that with respect to traffic such as the example already cited, namely, a shipment from Saint John to Montreal, a proportion of the earning accrues to the Eastern Lines and a portion accrues to the Central Region for the haul of 158 miles from Diamond Junction to Montreal, and the amount credited to the Eastern Lines is "the Eastern Lines' proportion of the through rate." Following are some examples of the practical working out of the interpretation of this provision of the Act here sought by applicants, namely, that the Eastern Lines' proportion represents the local rate from point of origin on the Eastern Lines to Diamond Junction as existing prior to July 1, 1927.

On June 30, 1927, there was in effect a commodity rate of 50 cents on canned or evaporated apples, in carloads, from Truro to Montreal. There was no commodity rate published to Diamond Junction so that the local rate Truro to Diamond Junction was the 5th class rate of 50 cents. Therefore, this 50 cent rate, under applicants' contention, is the Eastern Lines' proportion of the through rate, so that there would be no proportion of the rate left to be applied for the haul of 158 miles over the Central Region from Diamond Junction to Montreal. The 50 cent rate would be reduced by 20 per cent, or to 40 cents, so that the result is, first, no proportion of the rate available to be applied on the haul in the Central Region, second, a 20 per cent reduction in the *total through rate* Truro to Montreal, whereas the Act says the 20 per cent reduction should be based upon the Eastern Lines' proportion of the through rate.

There are numerous other commodity rates that would work out in the same way as above described to such destinations as Montreal, Sherbrooke, Lennoxville, Stanbridge, Bedford and Quebec, that is to say the local rate to Diamond Junction, or the commodity rate to the point of destination applied as maximum to Diamond Junction under the long and short haul clause where lower than the local rate, would bring about 20 per cent reduction in the total through rate, and the Eastern Lines' proportion of the through rate under applicants' interpretation would be the same as the total through rate, leaving no proportion for the haulage west of the Eastern Lines.

On June 30, 1927, there was in effect a commodity rate of 36½ cents on cooperage stock, carloads, Nelson, N.B., to Hamilton, Ont. The rate contemporaneously in effect from Nelson to Diamond Junction was the 10th class rate of 34½ cents, which, if reduced by 20 per cent, would equal a reduction of 7 cents, and 7 cents deducted from the 36½ cents rate Nelson to Hamilton would make a through rate of 29½ cents, while the Eastern Lines' proportion to Diamond Junction would be 27½ cents, so that the Eastern Lines' proportion for the haul from Nelson to Diamond Junction of 416 miles would be 27½ cents and the Central Region's proportion for the haul from Diamond Junction to Hamilton, 528 miles, would be 2 cents, and it would further represent a reduction of 19.2 per cent in the total through rate.

On June 30, 1927, there was in effect a commodity rate of 30 cents on shells, oyster and clam, carloads, from Tracadie, N.B., to London, Ont. There was no commodity rate published to Diamond Junction and, these articles classifying 8th class, the 8th class rate Tracadie to Diamond Junction was 37½ cents, but the 30 cent rate to London would apply as maximum to Diamond Junction under the long and short haul clause. Therefore, the 30 cent rate would represent the Eastern Lines' proportion of the through rate and be reduced by 20 per cent, making the through rate effective July 1, 1927, 24 cents, or a 20 per cent reduction of the total through rate. In other words, the result is that for the haul of 445 miles from Tracadie to Diamond Junction, the Eastern Lines' proportion of the rate would be 24 cents, which is also the through rate, leaving no proportion of the through rate available for the haul of 600 miles from Diamond Junction to London, and further, the total through rate, Tracadie to London, Ont., would be reduced 20 per cent.

Applicants' Exhibit 8 shows that with respect to the class rates, as distinguished from the commodity rates, there are some instances where the total through rate to points west of Diamond Junction would be reduced by 20 per cent and leave no proportion of the through rate available for the haulage west of Diamond Junction, and this exhibit also indicates the extremely disproportionate division of the through rate that would, in a great many cases, result from applicants' contention, for example:—

The first class rate Halifax to Montreal would be 84 cents, divided, 80·5 cents east of Diamond Junction, 3·5 cents west of Diamond Junction; in other words the Eastern Lines' proportion would be 96 per cent of the through rate for 80 per cent of the haul and 4 per cent would be the proportion of the rate west of Diamond Junction for 20 per cent of the haul.

The second class rate Sydney to Montreal would be 78 cents, divided, 76·5 cents east of Diamond Junction, 1·5 cents west of Diamond Junction; in other words the Eastern Lines' proportion would be 98 per cent of the through rate for 84 per cent of the haul and 2 per cent would be the proportion of the rate west of Diamond Junction for 16 per cent of the haul.

The first class rate Halifax to Ottawa would be 88 cents, divided, 80·5 cents east of Diamond Junction, 7·5 cents west of Diamond Junction; in other words the Eastern Lines' proportion would be 92 per cent of the through rate for 71 per cent of the haul and 8 per cent would be the proportion of the rate west of Diamond Junction for 29 per cent of the haul.

The first class rate Saint John to Toronto would be 95·5 cents, divided, 77·5 cents east of Diamond Junction, 18 cents west of Diamond Junction; in other words the Eastern Lines' proportion would be 81 per cent of the through rate for approximately 49 per cent of the haul and 19 per cent would be the proportion of the rate west of Diamond Junction for approximately 51 per cent of the haul, so that it will be observed that even after a reduction of 20 per cent therein, the Eastern Lines' proportion of the through rate, for slightly less than half the total distance, would be over three times greater than the proportion of the through rate west of Diamond Junction, for a slightly longer haul.

Upon full consideration of the submissions and argument of counsel for the applicants, my view is that the previous ruling of the Board as to the proper interpretation of the Act with respect to the calculation of the Eastern Lines' proportion of the through rate, as set out in the Board's letter of December 13, 1928, to Mr. Porter, solicitor for the Transportation Commission of the Maritime Board of Trade, should be reaffirmed.

January 5, 1931.

Commissioner Norris concurred.

#### ORDER No. 46108

*In the matter of the application of the Transportation Commission of the Maritime Board of Trade, hereinafter called the "Applicant," for an Order directing the Canadian National Railways to publish tariffs of rates from points in the Maritime Provinces to stations west of Diamond Junction or Levis, accurately conforming with the Maritime Freight Rates Act.*

File No. 34822.33

FRIDAY, the 9th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Saint John, September 30, 1930, in the presence of counsel for and representatives of the applicant and the Canadian National and the Canadian Pacific Railway Companies, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—



*The Board declares:* That its previous ruling as to the proper interpretation of the Maritime Freight Rates Act with respect to the calculation of the Eastern Lines' proportion of the through rate, as set out in the Board's letter of December 13, 1928, to the solicitor of the Transportation Commission of the Maritime Board of Trade, is hereby reaffirmed;

*And the Board orders:* That the application be, and it is hereby, dismissed.

H. A. McKEOWN,  
*Chief Commissioner.*

*Application of the Municipal Corporation of the Township of York, Ont., for an Order requiring the construction of a subway under the railway tracks and right of way of the Canadian National and Canadian Pacific Railways, at a point where such railways cross Eglinton avenue, Township of York.*

File 9437.1244

### JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Application is made for a subway on Eglinton avenue, in the township of York. The point in question is located a short distance east of Weston road. The street is crossed by a track of the Canadian Pacific and by a track of the Canadian National Railways; the distance of one track from the other, centre to centre, is, approximately, 103 feet. The road is admittedly senior to the railways. It is, in fact, an original road allowance, being the third concession north of the Humber river. The crossings are at present protected by double bells and wigwags. The application for a subway desires the cost to be on the Grade Crossing Fund and the railways, without any contribution from the municipality.

The subway as proposed from point to point where the grades will run out covers a distance of 1,100 feet. The subway construction itself will run out at about 900 feet. Provision is made in the plans for a subway with two tracks for each railway.

The engineer for the township, Mr. Goedike, estimates that the land damages will amount to \$175,000; the total cost, including land damages, is placed by him at \$456,000.

The plant of the Canadian Kodak Company is adjacent to the point where the tracks cross the highway. It is suggested by counsel for the township that the workmen engaged in the plant and the pupils attending the High school constitute a large part of the traffic crossing the tracks day and night.

Stress is laid upon the rapid development of the township in recent years. While it is a separate municipality distinct from the city of Toronto, it is, in fact, an urban community which is separate from the city not by any gap in the settlement or construction but, simply, by municipal boundaries.

The arguments for the subway were developed at some length in the evidence by witness Goedike. See in this connection *Evid. Vol. 573, pp. 7479, 7483, and 7497.*

He stated there was a pressing need for grade separation. In response to a question whether it was needed to relieve congestion, he answered in the negative. When questioned by counsel for the Canadian Pacific whether the work was needed to relieve unemployment, he replied: "No, I do not think unemployment at all." When same counsel queried, "Unemployment has nothing to do with this," witness answered, "I do not think so," p. 7497. On the other hand, counsel for applicant, in his argument, emphasizes, at p. 7530, the amount of unemployment existing.



One point which bulked largely in the evidence of witness Goedike was the development of a highway linking the eastern and western portions of Toronto as well as the adjacent municipalities. He stated in evidence, p. 7479, that Eglinton avenue was now being paved in many portions to the width of 54 feet. The street in question, he stated, runs from Leaside west to the Humber river, going through a thickly populated section of the city of Toronto; also traversing Forest Hill village and York township. This was developed in examination in chief by counsel for the applicant municipality.

The reeve of Forest Hill expressed his approval of such development. It is, however, to be noted that it was not proposed that this municipality should participate in the cost of the work.

In substance, the opinion of witness Goedike was that eventually Eglinton avenue would be the third entrance to the city of Toronto from the west. At p. 7485, he expressed the opinion that if a subway were constructed and the pavement completed, the traffic over Eglinton avenue would be at least ten times what it now is, and that it would approximate the traffic on St. Clair avenue. In response to a question from counsel for the Canadian Pacific, "I take it that this third entrance from the west is in the future," the witness said, "Yes."

Traffic statements were submitted; these may be subjected to analysis. Exhibit 5 is a traffic census of the township of York, submitted by its counsel and covers the period from 7.30 a.m., November 15, 1930, to 9 p.m., November 17, 1930. This shows for the three days in question 6,293 movements. Included in this are the number of passengers in motor vehicles amounting to 2,354, or 1.8 passenger per car. While this detail may be interesting as a matter of record, the number of people in motor cars is no necessary index of the number of movements which must be considered. It appears that the figure 2,354 should be deducted.

While the statement given analyzes the highway traffic by hours, it gives no detail in regard to the railway traffic. On November 15, the hours taken were from 7.30 a.m. to 9 p.m. On November 16, from 8 a.m. to 10 p.m.; and on November 17 from 7 a.m. to 9 p.m. The totals were as follows:—

Date	Pedestrians	Bicycles	Passenger Motors	Trucks	Horse-drawn Vehicles
November 15.. . . . .	534	68	428	81	33
November 16.. . . . .	193	68	471	6	..
November 17.. . . . .	1,603	89	590	59	36

The total movements for this three-day period amount to the following both as to gross figures and percentage:—

Movements	Number	Per cent of total movements
Pedestrians . . . . .	2,323	56.3
Bicycles . . . . .	175	4.2
Motors (passenger) . . . . .	1,324	32.1
Trucks . . . . .	233	5.6
Horse-drawn vehicles . . . . .	69	1.8
Movements . . . . .	4,124	

The returns for the period covered by Exhibit 5 show in respect of other traffic a fairly well balanced condition,—

	Bicycles		Pass. Motors		Trucks		Horse-drawn Vehicles	
	E.	W.	E.	W.	E.	W.	E.	W.
November 15 . . . . .	31	37	176	252	29	52	16	15
November 16 . . . . .	3	15	92	136	5	7	1	2
November 17 . . . . .	48	41	291	299	59	79	17	19
	92	93	559	687	93	138	34	36
Average per day . . . . .	30	31	186	228	31	46	11	12

The period taken covers a Saturday, Sunday and Monday. Apparently Saturday and Sunday are not characteristic in point of traffic figures. On Saturday, the 15th, the pedestrian traffic which amounted to 534 is distributed fairly evenly over the whole period, the highest in one hour being 60. On Sunday, the 16th, the pedestrian traffic was only 195, the highest in one hour being 15. On Monday, the 17th, however, 1,603 pedestrians are shown; 82 per cent of this moved over the crossing in the period 7 a.m. to 6 p.m. So far as motor traffic is concerned, the traffic is much lighter on Saturday and Sunday.

An analysis of the number of movements involved in the computation in question gives the following results:—

Nature of movement	Number of movements	Per cent of total movements
Pedestrian . . . . .	1,603	64.9
Motors (passenger) . . . . .	590	23.9
Trucks . . . . .	140	5.6
Bicycles . . . . .	99	4.0
Horse-drawn vehicles . . . . .	36	1.2

Making a further summary, the total number of movements shown for Monday, November 17, is 2,377, of which approximately 67 per cent is concerned with pedestrian traffic.

Counsel for the township asked for a schedule showing the number of trains passing over this crossing daily on the Canadian Pacific and Canadian National Railways. Detail has been furnished for November 11, 13, 15, 16 and 17. These have been summarized in a letter submitted by counsel as showing an average of 52 train movements a day on week days and 22 on Sundays.

In the hearing in 1915, counsel for the township submitted a statement of traffic covering a 36-hour period. This showed 2,070 pedestrians, 53 passenger motors, 123 bicycles, 206 rigs and teams, and 87 trains. This reduced to a 24-hour basis shows approximately 58 trains per day.

A statement covering traffic August 30, 1922, from 6 p.m. to 6 p.m. September 1, shows 996 vehicles 4,568 pedestrians, and 110 trains; or an average of 55 trains per day.

Exhibit 13 filed by the Canadian Pacific Railway 1930 and covering period 7 a.m., September 25, to 7 a.m., September 27, Thursday to Saturday, inclusive, shows 85 trains; or an average of 42½ for 24 hours.

In general, it may be said that the traffic on the highway has been increasing while the number of movements on the railway has either been constant or tending to decrease.

It has not been established in evidence that there is such congestion of traffic as to create a source of danger. The argument that the opening of a subway will afford a new means of communication between the east and the west in an urban group including and surrounding Toronto is a matter of road improvement, in which the Board is not empowered to act.

As the case was developed by the technical witness who had responsibility for the plan, the point that was specially emphasized by him was the advantage which would be effected by the improvement resulting from the opening of the subway. An improved highway, of which the subway was regarded as a necessary portion, would, it was anticipated, carry a large volume of traffic moving from and to other portions of the urban area in which the applicant is located.

As has been pointed out, the Board is not empowered to direct moneys to be paid out of the Grade Crossing Fund to effect betterments in highways, nor is it empowered to direct railways to make expenditures in order to make betterments in highways. But if stress is laid upon the community advantage of subway construction as part of an improved highway, it is open to refer to what is being done in other parts of the general urban community which embraces the township of York, and to have in mind the expenditures being



made thereon in which the railway, the Grade Crossing Fund, and the municipality are co-operating, as well as the expenditures made in the past.

The existing crossings are protected by bells and wigwags. The traffic would appear to be local and, therefore, in a position to understand the danger which attaches to every local crossing, if reasonable care is not exercised.

On careful consideration of the matter, it does not appear that a case justifying the application has been made out.

January 8, 1931.

Commissioner Norris concurred.

*Application of Express Traffic Association of Canada for approval of proposed Supplement "M" to Express Classification for Canada No. 7.*

File No. 4397.100

### JUDGMENT

CHIEF COMMISSIONER McKEOWN:

Application is made to the Board by the Express Traffic Association of Canada for approval of proposed supplement "M" to the Express Classification for Canada No. 7. The suggested changes include several items as mentioned below:—

Conditions of Carriage and Directions to Agents, No. 26, as well as an altered definition of the word "boxed."

Condition of Carriage, No. 27, to allow articles packed in cartons the same rating as applies to them when packed in wooden boxes.

The application also involves a change in the rating on a certain class of furniture, namely, bamboo, cane, fibre, grass, rattan, reed, willow or wire chairs, settees, stools, and tables, as follows:—

K.D. flat, boxed or crated . . . . .	1
S.U. boxed or crated . . . . .	2 t 1
S.U. not boxed or crated . . . . .	3 t 1

In addition to the above, an advanced rating is asked, applicable to Neon tube lights or signs, for the reasons hereinafter indicated.

Concerning the conditions which deal with the rate on articles packed in cartons, as compared with wooden boxes, and the definition of the word "boxed," it is unnecessary to discuss them further, in as much as an agreement was reached with reference to Condition No. 26, which was satisfactory to the Canadian Manufacturers' Association, the Montreal and Toronto Boards of Trade, and Firstbrook Boxes Limited, all of whom had been in correspondence with the Board concerning the same. And as regards Condition No. 27, the matter has been the subject of discussion between Mr. Brown of the Canadian Manufacturers' Association and the applicants, and the former stated that the association was willing that the rule as proposed should go into effect, on the understanding that the matter would be discussed later between the companies and the manufacturers. Consequently, upon the two items mentioned above, no action need be taken at present by the Board, and probably it will be unnecessary to consider them further.

The two conditions above referred to were disposed of before the hearing so there remained but two matters at issue, one being a proposed increase in rate on reed and fibre furniture, and the other for an increase in the rate on Neon tube lights or signs.

The matter was heard before the Board at Ottawa on December 2, 1930. Mr. Ham, Chairman of the Express Traffic Association, appeared in support of the application, and Mr. S. B. Brown, of the Canadian Manufacturers' Associa-



tion, appeared for other parties in interest. No evidence was called, and no discussion had, upon the proposed increase on reed, fibre, or bamboo furniture, but by agreement this item was left to be disposed of on the written submissions already filed. In the present classification this furniture takes a first-class rating as furniture N.O.S. Mr. Ham stated that when shipped in bales, as is usually the case, a rate three times first-class is applicable; that it is extremely light, running from  $1\frac{1}{2}$  to 2 pounds per cubic foot; and it is proposed in the application to charge two times first-class, being an advance of 100 per cent when packed in crates or boxes.

The proposed advance is strongly objected to by Mr. Brown, Manager of the Transportation Department of the Canadian Manufacturers' Association, who has placed before the Board a comparison of the present and proposed rate on specific shipments from Waterloo, P.Q., to various points named, as follows:—

From Waterloo, P.Q., to	Present	Proposed
Toronto, Ont. . . . .	\$3 25	\$ 6 50
Ottawa, Ont. . . . .	1 90	3 80
Winnipeg, Man. . . . .	9 90	19 80
Hamilton, Ont. . . . .	3 25	6 50
Moncton, N.B. . . . .	3 50	7 00
Halifax, N.S. . . . .	4 05	8 10

A further statement showing the weight of fibre and reed furniture has been placed on file, indicating that it carries a weight per cubic foot of from 1·8 to 3·15 pounds, which approximates that of other furniture, and it is pointed out that a check made by shippers over a considerable period has not disclosed that any claims have been presented to the express companies for damage caused to this kind of furniture, which is strongly made, and in weight per cubic foot, approximates that of other furniture.

In view of the above, it does not seem that the proposed advance of 100 per cent is reasonable. I am of opinion that the rating should remain as at present.

A similar application was brought before the Interstate Commerce Commission in 1922, Express rates I.C.C. 83-606, and decided November 10, 1923. Under the United States Classification the rate on fibre furniture had been double that on wooden furniture, but under the decision the two rates were equalized, both being put at first-class when shipped in boxes or crates.

I do not think there is a dissimilarity in conditions which would call for a higher rating upon this class of furniture in Canada than in the United States, and for these reasons think that this branch of the application should be disallowed.

As regards the application for an increase in the rate on Neon tube lights or signs, it may be pointed out that at present they are charged first-class rate, and the motion is to increase such rating to one and a half times first-class. There is no specific provision at present covering these articles. Neon tubes are filled with gas and are extremely fragile. They carry a relatively high valuation being both light and bulky, and it is stated in the application that when packed for shipment they approximate 4 pounds to the cubic foot. Exhibits filed with the Board at the hearing show the weight of such packages as running from 1·14 to 10·57 pounds per cubic foot, depending largely upon the weight of the container. It was alleged in support of the application that, when carried by freight, Neon tube lights and signs are assessed double first-class rate.

From the standpoint of carriage by express, these signs may be compared with radio tubes and electric light bulbs, which are now rated one and a half times first-class, and also with X-ray tubes, mercury tubes and rectified tubes.

It was stated by Mr. Ham, Chairman of the Express Traffic Association, that the complete signs move largely by freight, and while the Canadian Freight Classification does not at present provide a specific rating on Neon signs they are charged by freight double first-class under item 15, p. 252—Signs, N.O.I.B.N.

It is stated that in the forthcoming proposed supplement to the Freight Classification a specific rating of two times first-class will be published on these Neon tube signs.

Mr. Ham based his application for an increase in rating on these articles upon the fact that they require special attention in handling and storing, on account of the extremely fragile nature of the article, and not because of liability of damage, which is covered by the terms of the express receipt which provides, clause 5 (c):—

“Unless caused by negligence, the company is not responsible for any loss, damage, or delay caused by the act of God, the King’s or public enemies, the authority of the law, quarantine, riots, strikes, perils of navigation, defect or inherent vice, or the act or default of the shipper or owner.”

Mr. Ham’s view is, that as regards these articles under consideration, there is “defect or inherent vice” within the terms of the above quotation, in that they are so fragile that it is impossible to pack them in such a manner that with ordinary handling they will be at all times immune from damage when carried by express.

Be that as it may, I think that in view of the fact that analogous articles are carried by express at one and a half times, or twice, first-class, and considering also that the Freight Classification provides a two times first-class, and that they call for excessive care in handling, and must be packed in such a manner as to be extremely bulky—in view of all these things, I think the proposed classification of one and a half times first-class should be allowed.

Deputy Chief Commissioner Vien concurred.

January 14, 1930.

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ORDER NO. 46135

*In the matter of the application of the Express Traffic Association of Canada for approval of proposed Supplement “M” to the Express Classification for Canada No. 7, on file with the Board under file No. 4397.100.*

THURSDAY, the 15th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, December 2, 1930, in the presence of representatives of the Express Traffic Association of Canada, the Montreal Board of Trade, and the Toronto Board of Trade, and what was alleged; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is Ordered:* That the said proposed Supplement “M” to the Express Classification for Canada No. 7, filed by C. N. Ham, Chairman of The Express Traffic Association of Canada, on December 20, 1930, be, and it is hereby, approved, with the exception of the item on bamboo, cane, fibre, and other furniture; the said supplement to be published as No. 15 to the Express Classification for Canada No. 7.

H. A. McKEOWN,  
*Chief Commissioner.*

*Application of the City of Winnipeg for an Order authorizing and requiring the Midland Railway Company of Manitoba to widen present subway under said Company's tracks at Portage Avenue, now used by the Winnipeg Electric Company and known as St. James Subway;*

and

*Application of the City of Winnipeg for an Order authorizing and requiring the Canadian Pacific Railway Company to widen the present subway under the tracks of said Company's Pembina Branch at Portage Avenue, now used by the Winnipeg Electric Company and known as St. James Subway.*

File 386

## JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

In addition to the application herein concerned, applications were launched by the city of Winnipeg in respect of ten other subways. The discussion centred around (1) the construction of subways on Academy Road by the Canadian Northern and Canadian Pacific Railways; (2) the question of a subway under the lines of the Midland and Canadian Pacific Railways where they cross Portage avenue; and (3) a subway under the tracks of the Canadian Northern Railway where they cross Portage avenue in the city of Winnipeg and the municipality of St. James.

In the proceedings before the Board, the presentation made in respect of Academy road and Portage avenue crossings by the Canadian Northern was rather incidental. The Board of Trade of Winnipeg, under date of October 13, 1930, asked that in the event of an Order issuing for the construction of subways on Academy road and Portage avenue, a clause should be inserted in the Order instructing the railways affected to consolidate their tracks at these locations; it being in the best interests of economy and safety.

Examination has been made by the Board's Engineer who reports as follows:—

Case 3. Application for subway, the first location examined, where the street railway is under the tracks of the Canadian Pacific Railway and Great Northern Railway, along the south boundary of Portage avenue.

Case 4. Application for subway, the second location examined, at Westside, Portage avenue, in the municipality of St. James, on the Canadian National Railways.

Case 10. Application for a subway on Academy road, the third place examined. This is on the Canadian National Railways.

Case 9. Application for a subway, also, on Academy road, the fourth place examined, where the Canadian Pacific and Great Northern Railways cross it.

Case 12. Application for a subway, the fifth place examined, Wellington Crescent extension. This is where the Great Northern Railway swings out from the Canadian Pacific to permit of swing bridge operation at the crossing of the Assiniboine river. The Great Northern Railway bridge is of wood construction, including the substructure.

The following is a list of the industries located at Westside, on the Canadian National Railways, north of Portage avenue, as furnished by the company:—

Coast Lumber Co.—Lumber.

Douglas Hay and Grain Co.—Grain and feed.

Building Products & Supply Co.—Sand and gravel.

H. J. McNeil—Coal and wood.



Leslie Miller—Coal and Wood.

John Irwin—Coal and wood.

Arctic Ice Company—Coal and wood.

M. McMahan—Coal and wood.

D. Adams & Co.—Coal and wood.

Winnipeg Supply Co.—Sand, gravel, bricks, etc.

H. A. Buckle—Coal and wood.

George Robson—Coal and wood.

Anglo-American Asphalt Co.—Asphalt.

B. M. Hill Co.—Paint.

Western Gypsum Products Co.—Gypsum.

Gypsum Lime & Alabastine Co. of Canada—Gypsum, lime, etc.

I am informed that the average earnings, including passenger, freight, and express, per annum, is around \$200,000.

South of Academy road, about one-quarter of a mile, there is a 10-car siding, and about 200 cars per year are unloaded at this point, principally coal for the surrounding district, average earnings of which is not included in the above amount.

On the Canadian Pacific Railway, there is a spur serving Polo Park, north of Portage avenue; and I am informed the earnings of this last year were \$6,120; and on the spur south of Academy road, about one-quarter of a mile, known as the College Spur, the earnings were \$2,351.

In view of the increased business at Polo Park and vicinity, the Canadian Pacific purchased extra lands in order to take care of future business that would be served by their railway.

There are no industries served by the Great Northern Railway that would be affected by any change in location of the railway. They have, of course, their right of way, which is common to all three railway companies, affording them the opportunity of serving industries that may be located on and outside their respective properties."

In the case of the Canadian Pacific crossing of Academy road, it was agreed, after discussion, that it should stand for further negotiations between the parties; to be brought up either by notice that the matter had been settled or by application for hearing at a convenient time. The same provisional arrangement was made in regard to the proposed subway at the point where the Canadian Northern crosses Academy road.

The application for a subway under the tracks of the Canadian Northern Railway crossing Portage avenue stood for action in regard to file 386. The other applications, by agreement arrived at between the parties at the hearing, stand over for the filing of plans and further negotiations.

The Canadian Pacific and Midland Railways are practically on the same right of way where they cross Portage avenue. The Canadian National is about 1,800 feet away from the other two railways where it crosses the western part of the city.

Counsel for the Canadian Pacific was at one with counsel for the city in acknowledging that the Portage avenue crossing was the most important one of those located in the western group of subways asked for. At the same time, he contended that the necessity, if any, for a subway arose from the highway traffic. He pointed out that on the railway the traffic was light, the speed moderate, and limitation of hours in regard to switching.

There is at present a subway for the use of electric street cars which is known as the St. James Subway. The subway in question is located at one side of the road. The application involved in the present case had in mind to enable the tracks of the Winnipeg Electric Railway to be placed in the centre of the highway and thus afford more facility for vehicular and pedestrian traffic.

When the application was received by the Board, direction was given to the city of Winnipeg to be prepared to submit at the hearing details bearing upon the question of traffic as measuring the need for protection and, also, detail in regard to cost. On account of the represented urgency of the matter, a special sitting was arranged for. When the Board sat in Winnipeg on November 12, 1930, it appeared that on account of some negotiations still pending the parties were not prepared to go on; it was represented that an adjournment of some time might enable the parties to come to an agreement. On account of the engagements of the Board, it was not feasible to give a long adjournment; so a partial adjournment until the following day was given.

At the adjourned sittings of the Board on November 13, 1930, a plan of the subway on Portage avenue, at the point where the Canadian Pacific and the Midland Railways cross, was submitted by the city engineer. He stated at p. 7332 of the evidence: "We have only just been able to get these plans ready; we have not served copies." In the discussion which took place, it was developed that the plan made was simply a sketch plan made on the day of the hearing. The engineer admitted there was no close estimate. He referred to an estimate of \$300,000 which he said he thought had been made in 1921. When questioned, he said this estimate did not include land damages. In answer to a question,— "So far as the estimate of cost is concerned, what is submitted is an estimate made in 1921 which did not include lands necessary," he answered, "That is correct." When a further question was directed to him, "And you have no estimate or tentative estimate in respect of the proposed work at the present time," he answered, "No."

The approaches to the subway are figured on a 3 per cent basis. Counsel for the Canadian Pacific contended that 5 per cent approaches would be quite satisfactory and would reduce the cost. The engineer for the Canadian Pacific estimated the cost of the subway at \$150,000.

Counsel for the city stated he had not been able to get extensive statements in regard to conditions of traffic. A statement covering train movements December 24 and December 30, 1920, was filed. These do not give any information as to the traffic on the street at the time in question. Counsel submitted, however, that this statement was of some use from a comparative standpoint. This is set out in Exhibit 5. It shows the traffic on the Midland and the Canadian Pacific. On December 24, 1920, there are movements shown in ten hours, showing in the case of the Midland Railway one engine northbound; none southbound. For December 30, 1920, the movements over the two lines are two northbound and four southbound; making a total of six. As already pointed out, no detail is given as to the pedestrian traffic at the point in question.

A fuller statement of the traffic of 1920 is contained in Exhibit 8 filed by counsel for the Canadian Pacific Railway. This covers a check of traffic at the crossing made from 8 o'clock October 11 to 8 o'clock October 13, 1920. The total train movements for the 48-hour period are 23—10 north and 13 south.

Train movements	Autos.	Veh.	Ped.	Equest.	Bicycles	Total
23	5,725	644	926	3	1,747	9,068

These 23 train movements took place during 16 hours, or one-third of the time concerned. Taking the figures so shown for the 16-hour period and working them out as a percentage of the total movements for the 48 hours, we have the following results:—

	Autos.	Veh.	Ped.	Equest.	Bicycles
Total movements. . . . .	5,725	644	926	....	1,747
Movements during 16-hour period. . .	2,260	306	43	....	1,088
Percentage of total movements. . . .	37%	40%	45%	....	62%

Exhibit 6, filed by counsel for the city of Winnipeg, covers the pedestrian traffic from 7 a.m., Friday, November 7, 1930, to midnight, Sunday, November 9,



1930; and it also covers the train movements on the Canadian Pacific and Midland Railways at the point in question during the same period.

Giving, in the first instance, gross figures of traffic on the highway which cover street cars, automobiles, rigs, bicycles, and pedestrians, this shows for the three days a total of 31,486 movements, which are divided 15,477 west and 16,009 east. Included in this total, however, are the figures for street cars. As the street cars pass through the existing subway at this point, they may be deducted from the total. This makes a difference of 1,535 to be deducted.

In dealing with the question of subway construction and the danger alleged to be attached to the particular grade crossing concerned, it is justifiable to consider, among other factors: (a) whether the traffic is light or heavy; (b) whether the traffic is distributed with relative uniformity throughout the twenty-four-hour period, or whether there is a congested condition during a limited number of hours; (c) the nature of the traffic; (d) the relation of the train movements to the highway traffic, etc.

During the forty-eight-hour period in question, the total number of movements in the Canadian Pacific amounted to 17, 8 being northbound and 9 southbound. Of these, 4 are passenger mixed, 7 freight, 6 hand-cars. For the Midland, there are also 17. The Midland has no passenger mixed trains; the freight train movements are 5 in number; there are 10 hand-car movements and 2 light engine movements. Taking these figures by themselves, a very light traffic is shown.

Exhibit 9, filed by counsel for the Canadian Pacific Railway, shows a statement of passenger and freight trains over the crossing from October 25 to October 31, inclusive. On October 26, which was a Sunday, there was no movement. It is also set out that during the grain movement there are one or two trains additional per day. This gives a total of 36 movements for the seven-day period in question distributed as follows:—

Passenger traffic . . . . .	Leaving 6	Arriving 6
Freight traffic (way freight) . . . . .	Leaving 6	Arriving 5
Extras . . . . .	Leaving —	Arriving 1
Switchers . . . . .	Leaving 6	Arriving 6
	18	18

Exhibit 10, filed by the Canadian Pacific Railway, covers an analysis of traffic at the crossing from 24 o'clock on September 8, 1930, to 24 o'clock on September 9, 1930, which shows the following results:—

	Trains	Autos.	Rigs	Bicycles	Pedes.	Motor cycles
Sept. 8. . . . .	8	8,263	154	520	766	87
Sept. 9. . . . .	11	9,001	243	539	733	101
Total general movement—10,617.						

On September 8, 94½ per cent of the general traffic took place during the 17 hours, from 7 a.m. to midnight, at a fairly steady average of 526·4 per hour, and during which 6 of the train movements took place; 60 per cent, representing 6,117 general movements, took place during 17 hours of non-train movements.

Substantially the same situation appears when the figures for September 9 are analyzed.

On September 8, there were eight freight train movements in seven hours. This was during the grain season when the traffic was heaviest. This period had—

Total auto movements	Total rigs	Total bicycles	Total pedes.	Total motor cycles
35%	40%	57%	30%	29%

On September 9, there were 11 train movements in an eight-hour period. In the same period, the percentages of vehicular and pedestrian traffic, to the total movements in each such class during the twenty-four-hour period, are as follows:—

Total auto movements	Total rigs	Total bicycles	Total pedes.	Total motor cycles
37%	61%	56%	40%	38%



The amount of money which it is necessary to expend in order to obtain a safe crossing by means of grade separation is by no means the final criterion. Dollars are not being weighed against accidents. Consideration must be given to the volume of traffic and its distribution as between vehicular and pedestrian highway use on the one hand and crossings by railway trains on the other.

The returns given in the present instance show that the bulk of the vehicular traffic takes place at a time when there are no train movements. It appears that the train movements are limited in number and in speed. There is, of course, an element of danger in connection with every level crossing and it is necessary to use reasonable care. With the exercise of such reasonable care, the danger is brought down to the minimum, if not to the vanishing point. Large sums are being expended on grade separation schemes. In those, there is co-operation of the Dominion, the municipality, and the railways; and, in some instances, there has been co-operation of the Provinces. The expenditures already made, and still being made, point to the fact that with the development of Canada greater demands for grade separation will come to the front. It is necessary in dealing with such matters to have a reasonable body of proof establishing the need for the work.

In the present instance, it has to be said that the evidence submitted is not conclusive. Partial traffic statistics and hurried sketch plans, which were not in shape for final consideration and in connection with which relatively exact statements of cost were not available, were presented: Apparently this was due to the urgent request that the applications should be proceeded with. It would appear that conditions, and not counsel, were responsible for this. On the representation of the urgency of the applications, an expedited hearing was provided for; it developed that the applications were not in such shape as to take full advantage of this. At the hearing, when information was asked for as to the relative importance of the applications launched, it was only, after some pressure, that the particular subway on Portage avenue, herein involved, was finally indicated as being the most important.

The city of Winnipeg is still anxious to negotiate with the railways in an endeavour to obtain a unified plan which will permit the maximum of safety and convenience with the minimum of subway constructed and expense. Under these circumstances, no order is now issuing; the present is simply an interim judgment. The parties are urged to engage in further negotiations with a view to arriving at a systematized scheme which will adequately take care of what needs as to grade separation may exist, and will not be merely an arrangement in which each proposed work is looked at by itself.

Commissioner Norris concurred.

January 15, 1930.

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ORDER No. 46112

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 23rd day of December, A.D. 1930.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in Supplement No. 25 to Tariff C.R.C. No. E-1234 and in Supplement No. 24 to tariff C.R.C. No. E-1255, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46065

*In the matter of the Order of the Board No. 45973, dated December 20, 1930, suspending, pending further Order of the Board, items in tariffs of the Canadian National and Canadian Pacific Railway Companies, providing for the exclusion of scrap iron rates on crossings, frogs, switches, and switch points.*

File No. 27001.14.

MONDAY, the 5th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

Upon its appearing that similar tariff amendment is contained in Supplement No. 8 to Quebec Central Railway Company tariff C.R.C. No. 937; and upon the recommendation of the Chief Traffic Officer of the Board,—

*It is Ordered:* That items 2-C and 3-A in Supplement No. 8 to Quebec Central Railway Company's Tariff C.R.C. No. 937, which provide, effective January 15, 1931, for the exclusion of scrap iron rates on crossings, frogs, switches, and switch points, be, and they are hereby, suspended pending further order of the Board.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46085

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.2

WEDNESDAY, the 7th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 10 to Tariff C.R.C. No. E-1226 and in Supplement No. 17 to Tariff C.R.C. No. E-1259, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46086

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.2

THURSDAY, the 8th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 26 to Tariff C.R.C. No. E-1234, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46093

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.13

FRIDAY, the 9th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published in item 65 of Supplement No. 6 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which, but for the said Act, would have been effective in lieu of those published in the said item 65 of Supplement No. 6 to Tariff C.R.C. No. 851, approved herein, are the Domestic Class rates to Saint John, N.B., in effect prior to July 1, 1927, plus 3 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46094

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File 34822.13

FRIDAY, the 9th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the toll published in item 146 of Supplement No. 3 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 146 of Supplement No. 3 to Tariff C.R.C. No. 856, approved herein, is 8½ cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46095

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.13

FRIDAY, the 9th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the toll published in item 65 of Supplement No. 12 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 65 of Supplement No. 12 to Tariff C.R.C. No. 811, approved herein, is 14 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 46096

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 3

FRIDAY, the 9th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

1. *The Board orders:* That the toll published in item 196 of Supplement No. 4 to tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 196 of Supplement No. 4 to tariff C.R.C. No. 856, approved herein, is 14 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46097

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act*

File No. 34822.13

FRIDAY, the 9th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll published in item 120 of Supplement No. 26 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which, but for the said Act, would have been effective in lieu of that published in the said item 120 of Supplement No. 26 to Tariff C.R.C. No. 817, approved herein, is 7 cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46115

*In the matter of the application of the Northern Alberta Railways Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to open for the carriage of traffic that portion of its line of railway from mileage 89·0 to 138·8:*

File No. 31574.30

TUESDAY, the 13th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby authorized to open for the carriage of traffic that portion of its line of railway from mileage 89·0 to 138·8: Provided the operation of trains over the said line be limited to a rate of speed not exceeding twenty-five miles an hour.

H. A. McKEOWN,  
*Chief Commissioner.*

FEB 20 1931  
UNIVERSITY OF TORONTO

# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, February 15, 1931

No. 26

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*Application Transportation Commission of Maritime Board of Trade for an order directing the railway companies to reduce rates on grain and grain products for domestic consumption from points in the Canadian Northwest to points in Maritime Provinces;*

— and —

*Application of Nova Scotia Legislative Committee for a reduction in rates on grain for feeding purposes from Canadian Northwest points to the Maritime Provinces;*

— and —

*Application of Dairymen of O'Leary, P.E.I., for a reduction in rates on feeding stuffs used by dairymen in the Maritime Provinces.*

(File No. 37190)

### JUDGMENT

CHIEF COMMISSIONER McKEOWN:

Following an investigation by the Board pursuant to direction from His Excellency in Council, subsequent to general rate increases known as the thirty-five and forty per cent case, and after lengthy investigation accompanied by hearings at various places, the Board issued judgment under the heading "*Re Freight Tolls—1922*," reported in Board's Orders, Judgments, etc., Vol. 12, pp. 61-78, and the following conclusions were therein announced by the Board:—

#### " CONCLUSIONS

" All steam railways in Canada under the jurisdiction of this Board shall file tariffs, effective the first day of August next, providing for the following reduction, viz.:—

" (a) On the articles, other than grain and flour, hereinbefore referred to as basic commodities, namely, forest products, building material, brick, cement, lime and plaster, potatoes, fertilizers (other than chemicals), ores, pig-iron, blooms, billets, wire rods, and scrap iron, a decrease of  $7\frac{1}{2}$  per cent from the increase given by General Order No. 308 and any other orders affecting the said commodities issued since that date, which will hereafter leave the increase granted by said General Order No. 308, in



Western Canada, at  $12\frac{1}{2}$  per cent and, in Eastern Canada, at  $17\frac{1}{2}$  per cent; the term 'forest products' as set out in such list to be defined as follows:—

"In the territory east of Port Arthur, Ont., in accordance with the list of commodities shown in Canadian Pacific Railway tariff C.R.C. No. E-3818 as taking rate basis 'A'; in the tariffs from British Columbia to prairie points on the commodities taking Group A and Group B rates, as shown in Canadian Pacific Railway tariff C.R.C. No. W-2573; and from stations in Alberta and British Columbia to stations in eastern Canada, in accordance with the Canadian Freight Association tariff C.R.C. No. 30; also on pulpwood west of Port Arthur, Ont.

"In cases where reductions heretofore granted or ordered upon these commodities have not amounted to  $7\frac{1}{2}$  per cent as above described, they shall be reduced to that point, and, where they exceed  $7\frac{1}{2}$  per cent they will remain as they are at present.

"These reductions are made upon the same basis in both Eastern and Western Canada with the object of preserving the same spread between these territories as was provided by General Order No. 308.

"(b) On coal, other than anthracite and coal from the head of the lakes westward, all increases provided for by General Order No. 308 to be rescinded;

"(c) On commodities moving under class and commodity rates between points east of Montreal and points west of Port Arthur and Fort William, the establishment of arbitraries as provided for herein;

"(d) On the territory between North Bay and Sault Ste. Marie, Schedule A rates to be applied;

"(e) Mountain rates to be reduced to the basis provided for herein; and

"(f) The increase in excess baggage rates, as provided for in General Order No. 308, to be eliminated.

"With the above exceptions, all tariffs now in effect, either under the provisions of General Order No. 308, as amended by General Order No. 350, or as the result of voluntary action by the carriers, shall remain in force."

Immediately following the above conclusions, General Order No. 366 was issued, the operative part of which reads as follows:—

"The Board orders that all railway companies operating steam railways, subject to the jurisdiction of the Board, be, and they are hereby, required forthwith to file tariffs giving effect to the rates prescribed and authorized by the said judgment, which is hereby made part of this order; the effective date of the said rates to be August 1, 1922."

There is before us now an application on the part of the Transportation Commission of the Maritime Board of Trade joined in by the Nova Scotia Legislative Committee, and the dairymen of O'Leary, P.E.I., for an order directing the railways to reduce the rates on grain and grain products for domestic consumption, from points in the Canadian northwest to points in the Maritime Provinces, which application is founded upon an allegation that the rate now charged is not in accordance with the judgment and order referred to above, in that it has ignored the provisions of subsection (c) of the conclusions above enumerated. Grain and grain products carry the 8th class specification, and it is admitted that the rate now charged on these articles is not in accordance with the 8th class arbitrary as provided for in the judgment upon which these conclusions are based.

But the railway contends its charge is right, and points out, first, that grain and flour are specifically excluded from the decrease of  $7\frac{1}{2}$  per cent mentioned in conclusion (a), and claims that such commodities are exempted as well from the



provisions of subsection (c). It contends that a fair reading of the judgment makes it clear that grain and flour are not subject to the arbitraries named in (c), for the reason that the rate thereon has been lowered by the re-enactment of the Crowsnest rates, which involved substantial reduction in rate upon such articles.

It was emphasized at the hearing, and may be repeated here, that the disposition of the present application does not involve any pronouncement upon the justice or fairness of the rates complained of. We are not called upon to consider whether the change in times and circumstances of the last nine years should be reflected in a change of rate upon the articles in question, or any others. The whole issue now before us is, whether under the wording of the judgment and the order, the railways are right in excluding grain and grain products from the scope of subsection (c), or whether they should have put in a rate which would reflect the arbitraries provided for in that subsection which, it is admitted, has not been done.

In determining whether grain and flour are excluded from the operation of conclusion (c), we must take into consideration not only the wording of the conclusions themselves, but the whole judgment, as far as it has any bearing upon the point at issue.

It is common ground that the  $7\frac{1}{2}$  per cent decrease mentioned in conclusion (a) does not apply to the rates on grain and flour, because they are specifically exempted therefrom. But in regard to (c) applicants point out that there is no exclusion for grain and flour are not referred to at all in (c). Consequently, as far as the wording of that subsection is concerned, there is nothing to exclude these articles from the provision respecting arbitraries. It is stated that the different subsections enumerated in the conclusions are not related to each other; that (a) provides a decrease of  $7\frac{1}{2}$  per cent on articles specifically named; in (b) increases on coal provided by General Order No. 308 are rescinded; in (c) the establishment of arbitraries on commodities moving under class and commodity rates, as specified, is provided for; in (d) schedule (a) rates are to be applied in the territory between North Bay and Sault Ste. Marie; that (e) provides for a reduction of the British Columbia mountain rates; and (f) has to do with the elimination of excess baggage rates.

They argue that in none of these diverse subjects dealt with in the several conclusions, is there exhibited any relationship one to the other whereby it would necessarily or logically follow that the exclusion of grain and flour from the provisions of (a) carries any implication that it is excluded from the arbitraries outlined in (c), and especially in view of the fact that in order to avoid a  $7\frac{1}{2}$  per cent reduction on grain and flour, it was thought necessary to specifically exclude it therein when section (a) was framed.

It is contended by counsel for the railway company that the judgment upon which the conclusions above enumerated are based, makes it clear that the arbitraries provided for in subsection (c) of the conclusions were not intended to apply on grain and flour. In order to establish this position, it is not necessary for counsel to point out a specific paragraph or sentence in the judgment carrying that meaning, if a reasonable deduction to that effect can be made from any portion thereof.

There are two portions of the judgment which bear most closely upon the subject in dispute. They commence on p. 66 of the report and continue to p. 70. Allusion is made to the suggestions put forward by the Canadian Pacific and Canadian National Railway Companies, as to the method which might be pursued in making the contemplated reductions. The two companies joined in a suggestion that in lieu of the re-enactment of the Crowsnest Pass Agreement percentage reductions from the present rate should be made upon basic commodities including grain and grain products west of Fort William, and other articles enumerated in the judgment.

A statement filed by Mr. Lanigan is set out on p. 67 of the judgment showing that, if the proposals made by the railways were accepted, there would be an anticipated reduction in the revenues of the Canadian Pacific Railway Company amounting to \$8,338,469, exclusive of international and interstate traffic. Of the latter figure the sum of \$5,334,139, was attributed to the loss of revenue on grain and grain products, and the balance distributed among the other basic commodities mentioned in the statement. But the Crowsnest Pass rates being again enacted by legislation, the judgment continues:—

“By the legislation hereinbefore referred to granting the Crowsnest Pass rates on grain as therein provided, according to the evidence of Mr. Beatty, as recorded on p. 46 of the reports of the Special Committee; assuming the grain traffic of the Canadian Pacific Railway to be the same as in 1921, the adoption of the Crowsnest rates would reduce their revenue by \$7,159,537, which taken from the sum of \$8,338,469, would leave \$1,178,932 still available for reduction in rates on the above list of basic commodities, and the Board, after very careful investigation, has concluded that this would be represented by a reduction of 7½ per cent on the rates now in existence on these basic commodities, less than the increases authorized by General Order No. 308, not however including therein any reductions heretofore made upon any of the said commodities upon domestic rates in Canada.”

In the discussion under this head, there is nothing to limit the application of the arbitraries either directly or by implication. The applicants were able to point out to the Board instances in which the arbitraries specified in the judgment were established upon commodities originating west of Port Arthur and continuing through to the eastern Maritime Provinces, and from this it was argued that the arbitraries are intended to apply to grain and flour.

In that part of the judgment which is headed “Maritime Provinces” there is found the discussion concerning arbitraries, and it contains nothing excluding any description or class of freight. Pages 68, 69 and 70 are involved in the treatment of that subject, and described with particularity the method by which the rates to the Maritime Provinces have been set up, and the arbitraries from time to time existing. After stating what the arbitraries are, and should be, the discussion closes with these words:—

“These arbitraries over Montreal, first-class, should be scaled down on the usual relation between classes 1 to 10, and where commodity rates are published, will apply as maxima over Montreal at the class of the commodity so treated.”

Grain moves on a commodity rate.

Up to this point, attention has been directed solely to the wording of the conclusions and of the judgment which precedes the same, and of the proper construction to be placed thereon. There are other features, however, which are strongly relied upon by the railway company, and which introduce a disturbing element into the consideration of this application.

After the General Order No. 366, above alluded to, was made, the railways filed their schedules of rates, presumably in compliance with such order, and in the schedules so filed and of record for the last eight years, grain and grain products have not been allotted the arbitraries which the applicants say these articles are entitled to under the judgment. While it is true that when the order was issued, the rates on the Canadian National were not then under the control of the Board, yet they came under such control in 1923, and have remained unchallenged ever since, and neither is there any record of complaint being made to any one that they were not an actual compliance with the terms of the order.



The railway company urges that these circumstances show that it has put the proper interpretation upon the judgment, and that the lengthy acquiescence of all parties in interest, including the applicants, in the course pursued, has great significance and should be looked upon as decisive of the question which is now agitated.

The judgment of 1922 was issued as of 30th June of that year. It was known the Crownsnest rates on grain would again come into force on July 6, 1922, and for some years prior to the judgment the grain arbitrary had been on a different basis from the 8th class arbitrary, and during the proceedings before the Board which culminated in this judgment no attack was made upon the existing grain schedules, neither were they ruled upon by the Board, and, subject to percentage changes, the situation as it had existed was left unchanged.

While no official of the Board was called at the hearing to assist in interpreting the order, it is nevertheless a fact, that the Board's Chief Traffic Officer is wholly in accord with the course pursued by the railways in regard to the exclusion of grain and flour from the benefit of the arbitraries, and that he considers such course to be in compliance with the judgment and order. And what is of even more importance is that his view is concurred in by a member of the Board, who sat in the case and participated in the judgment.

From the above, I cannot help concluding that the course pursued by the railway was in accord with the accepted view of the intention of the judgment, however doubtful its wording may be.

While this application has nothing to do with export rates, but is simply concerned in securing a rate to provide feed for live stock, yet it is clear that if, by the interpretation sought by the applicants, it could be properly said that they are entitled to have their grain for domestic consumption brought down under the arbitraries, all other grain, as well as flour, would be similarly affected by the same ruling; and while that fact would not be conclusive, yet is not without a bearing upon the question of what is the correct interpretation of the judgment.

Allusion has been already made to the fact that in this application the Board has not been called upon to make a pronouncement upon the reasonableness or fairness of the rate charged for the carriage of grain and grain products to the eastern Maritime Provinces. Opportunity has been afforded me to read over the reasons for judgment prepared by Mr. Commissioner Norris who sat with me in this case, and am in accord with what is therein expressed. But this judgment is confined wholly to the question of the proper meaning of the Order, No. 366, as issued in 1922; and in view of the generally accepted interpretation thereof from the date of issue until this case was presented; and having regard as well to its interpretation by members of the Board and officials of the Board's staff who participated in its preparation and issue, I am unable to conclude that everyone who had anything to do with the preparation and enforcement of the Board's judgment of 1922, and the order following thereon, has fallen into error over the matter, and, consequently, think this application must be dismissed.

OTTAWA, January 16, 1931.



*Application of the Transportation Commission of the Maritime Board of Trade, for an Order directing the Railway Companies to reduce rates on grain and grain products for domestic consumption from points in the Canadian Northwest to points in the Maritime Provinces;*

— and —

*Application of the Nova Scotia Legislative Committee for a reduction in rates on grain for feeding purposes from Canadian Northwest points to the Maritime Provinces;*

— and —

*Application of the dairymen of O'Leary, P.E.I., for a reduction in rates on feeding stuffs used by dairymen in the Maritime Provinces.*

(File 37190)

Heard at Truro, N.S., September 23, 1930; Charlottetown, P.E.I., September 25, 1930; St. John, N.B., September 30, 1930; Ottawa, Ont., October 7, 1930; Ottawa, Ont., November 5, 1930.

## JUDGMENT

COMMISSIONER NORRIS:

Following the direction of the Order of His Excellency, the Governor General in Council (P.C. 2434), of date October 6, 1920, a lengthy and general inquiry was held by the Board into the whole matter of the equalization of Eastern and Western freight rates. The Board issued judgment on June 30, 1922 (see Board's Orders, Judgments, etc., Vol. 12, pp. 61-78). The conclusions embodied in this judgment are as follows:—

### “ CONCLUSIONS

“ All steam railways in Canada under the jurisdiction of this Board shall file tariffs, effective the first day of August next (1922), providing for the following reductions, viz:—

“ (a) On the articles other than grain and flour, hereinbefore referred to as basic commodities, namely, forest products, building material, brick, cement, lime and plaster, potatoes, fertilizers (other than chemicals), ores, pig-iron, blooms, billets, wire rods and scrap iron, a decrease of  $7\frac{1}{2}$  per cent from the increase given by General Order No. 308 and any other orders affecting the said commodities issued since that date, which will hereafter leave the increase granted by said General Order No. 308 in Western Canada at  $12\frac{1}{2}$  per cent and in Eastern Canada at  $17\frac{1}{2}$  per cent; the term ‘ forest products ’ as set out in such list to be defined as follows:—

“ In the territory east of Port Arthur, Ont., in accordance with the list of commodities shown in Canadian Pacific Railway tariff (C.R.C. No. E-3818), as taking rate basis ‘ A ’; in the tariffs from British Columbia to prairie points on the commodities taking Group ‘ A ’ and Group ‘ B ’ rates, as shown in Canadian Pacific Railway tariff (C.R.C. No. W-2573); and from stations in Alberta and British Columbia to stations in Eastern Canada in accordance with the Canadian Freight Association Tariff (C.R.C. No. 30); also on pulpwood west of Port Arthur, Ont.

“ In cases where reductions heretofore granted or ordered upon these commodities have not amounted to  $7\frac{1}{2}$  per cent, as above described, they shall be reduced to that point, and where they exceed  $7\frac{1}{2}$  per cent, they will remain as they are at present.

“ These reductions are made upon the same basis in both Eastern and Western Canada, with the object of preserving the same spread between these territories as was provided by General Order No. 308.

"(b) On coal other than anthracite and coal from the head of the lakes westward, all increases provided for by General Order No. 308 to be rescinded.

"(c) On commodities moving under class and commodity rates between points east of Montreal and points west of Port Arthur and Fort William, the establishment of arbitraries as provided for herein;

"(d) On the territory between North Bay and Sault Ste. Marie, Schedule 'A' rates to be applied;

"(e) Mountain rates to be reduced to the basis provided for herein; and

"(f) The increase in excess baggage rates as provided for in General Order No. 308 to be eliminated.

"With the above exceptions, all tariffs now in effect, either under the provisions of General Order No. 308, as amended by General Order No. 350, or as the result of voluntary action by the carriers, shall remain in force."

These conclusions were implemented by General Order No. 366, dated June 30, 1922, the operative portion of which order is quoted as follows:—

"The Board orders that all railway companies operating steam railways subject to the jurisdiction of the Board, be and they are hereby, required forthwith to file tariffs giving effect to the rates prescribed and authorized by the said judgment, which is hereby made part of this order; the effective date of the said rates to be August 1, 1922."

The present applications arise from the enforcement of General Order No. 366, the tariffs authorized by which came into effect on August 1, 1922. The applicants allege that the freight rates charged on grain and grain products are not in accordance with the judgment of the Board, or of General Order No. 366, which implemented this judgment.

The railways contend that their charges are correct. They point out that grain and flour are specifically excepted from the rate reduction provided by the Board's order, under the terms of subsection (a) of the conclusions of the judgment, which subsection (a) reads as follows:—

"(a) On the articles other than grain and flour hereinbefore referred to as basic commodities, namely, forest products, building materials, brick, cement, lime and plaster, potatoes, fertilizers (other than chemicals), ores, pig-iron, blooms, billets, wire rods and scrap iron, a decrease of  $7\frac{1}{2}$  per cent from the increase given by General Order No. 308, and any other orders affecting the said commodities, issued since that date, which will hereafter leave the increase granted by said General Order No. 308, in Western Canada at  $12\frac{1}{2}$  per cent and in Eastern Canada at  $17\frac{1}{2}$  per cent. . . ."

The applicants base their allegations on the wording of subsection (c) of the said conclusions of the judgment of the Board, and allege that the terms of this subsection have been evaded by the railway companies in fixing their tariffs on grain and grain products. Grain and grain products carry the 8th class rate specification, and would accordingly fall within the "class and commodity rates" covered by subsection (c), unless, as is the contention of the carriers, the excluding phrase of subsection (a) is meant to cover these commodities.

In the hearings of the applications in the Maritime Provinces in September, 1930, it was early developed, however, that the question at issue was not one of the actual fairness of the rates complained of; but rather of the proper interpretation of the Board's General Order No. 366 by the railway companies; and whether the carriers were, as the applicants allege, evading the meaning and intention of subsection (c) of the Board's judgment by charging a rate not in accordance with the 8th class arbitrary.



The present applications therefore become requests for the Board's interpretation of its General Order No. 366.

Following the hearings in the case, I have carefully studied the judgment and General Order of the Board, No. 366, of 1922, the arguments presented by counsel for the applicants and the carriers, as also the very complete and exhaustive digest of the case prepared by the Board's Chief Traffic Officer.

I respectfully submit, as my opinion, that whatever may have been the spirit or intention of the Board's General Order No. 366, it justifies the interpretation placed upon it by the carriers, and implemented in the resulting tariffs.

The conditions as affecting the shipment of grain and grain products from Western Canada to the Maritime Provinces for domestic consumption have however, undergone such change during the years since the passage of the Board's order, as to constitute a national problem, and one which, in my opinion, should be given very serious consideration in the light of the application of the maritime people for a reduction in the freight rates on these commodities.

Twenty years ago, and indeed until the beginning of the last decade, Western Canada produced an inconsiderable amount of grain below the contract grades for export; no more than could readily be absorbed on the farms or in the local districts where it was grown.

However, while the Prairie Provinces produce, under normal conditions, enormous quantities of the highest quality of wheat, oats, barley and other grains, from time to time, owing to rust, frost and exceptional season conditions over which the grower has absolutely no control, a large proportion of these enormous crops is damaged and thereby rendered unfit for export. In the crop year of 1928, to quote only one year, of the 500 million bushel crop west of the Great Lakes, an appallingly large proportion was below the grade for export and could only be used for feed purposes.

The bulk of this damaged or low grade grain makes excellent feed for cattle, hogs and poultry, and there is, provided stock of the classes named is kept locally in sufficient numbers to consume it, some salvage for the grower on what would otherwise be a total loss. It is unfortunately the case however, that in the sections where the largest grain crops are grown, the number of head of stock kept is correspondingly limited. Again, the unfavourable crop conditions, when they occur, are usually general throughout the west, and the supply of damaged grain is therefore far beyond any local demand, the loss to the producer becoming all the more serious.

This damaged grain costs exactly the same to produce as the grain of export quality, but with high grade grain selling at \$1 per bushel at the elevators, the feed grain will in many cases bring not more than forty cents per bushel.

The case of the Maritime Province stock feeder and poultryman is paralleled by that of his compatriot at the Pacific coast, on whose behalf strong representations have been made to the Board by the United Farmers of British Columbia, in regard to his need for lower freight rates on these cheap feed grains.

It was established on behalf of Pacific coast feeder that at the present high rates of freight charged on grain for domestic purposes from the prairies to British Columbia, namely 41½ cents per 100 pounds, such grain is practically excluded from the use of the coast feeders, and rendered unmarketable by the grower.

The value of low grade or damaged grains is not sufficient to allow the maritime consumer to pay a price that will enable the producer to haul it to a railway and pay the present high freight rates. The carrier therefore loses the haul of the grain, the producer loses the value of it, while the feeder is forced to pay high prices for his feedstuffs.

The shipment of these low grade and damaged grains from Western Canada to the Maritime Provinces for domestic purposes would accordingly benefit all



the parties, and the desire of the maritime stock grower and feeder to secure such a reduction in freight rates as will enable him to handle these feeds to advantage, is in my opinion worthy of the serious consideration of the Board.

I concur in the disposition of this case, as pronounced in the judgment of the Chief Commissioner.

OTTAWA, January 16, 1931.

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ORDER No. 46197

*In the matter of the application of the Transportation Commission of the Maritime Board of Trade for an Order directing the railway companies to reduce rates on grain and grain products for domestic consumption from points in the Canadian Northwest to points in Maritime Provinces; the application of the Nova Scotia Legislative Committee for a reduction in rates on grain for feeding purposes from Canadian Northwest points to the Maritime Provinces; and the application of dairymen of O'Leary, Prince Edward Island, for a reduction in rates on feeding stuffs used by dairymen in the Maritime Provinces.*

File No. 37190

WEDNESDAY, the 28th day of January, A.D. 1931.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

HON. T. C. NORRIS, *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Truro, Nova Scotia, September 23, 1930; Charlottetown, Prince Edward Island, September 25, 1930; Saint John, New Brunswick, September 30, 1930; and Ottawa, Ontario, October 7 and November 5, 1930, in the presence of counsel for and representatives of the province of Nova Scotia, the Nova Scotia Legislative Committee, the Department of Agriculture, Experimental Farms, the Canadian National Railways, Canadian Pacific Railway Company, Province of Prince Edward Island, Charlottetown Board of Trade, Transportation Commission of the Maritime Board of Trade, farmers of Kings County, Montreal Board of Trade, and millers of Western Canada, Alfred D. Freeze, A. C. Taylor, and Fred H. Walsh appearing in person, and what was alleged; and upon the report of its Chief Traffic Officer,—

*The Board orders:* That the applications be, and they are hereby, refused.

H. A. McKEOWN,  
*Chief Commissioner.*

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*Application of the Express Traffic Association of Canada that its application for an increase in the estimated weight on eggs, which was a portion of the application for approval of Supplement "H" to Express Classification for Canada No. 6 be now disposed of by the Board.*

(File No. 4397.47)

JUDGMENT

CHIEF COMMISSIONER McKEOWN:

The Express Traffic Association of Canada has renewed its application for permission to establish an estimated weight of 58 pounds for 30-dozen cases of eggs, instead of 55 pounds as at present.

The matter was before the Board in May, 1928, and it was then thought that it might wait decision in the General Express Case then pending, which was an application by the Express Traffic Association for a general increase in rates, but which has since been abandoned. It is contended by applicants that the proper weight of egg cases is in excess of 55 pounds, and they ask that an estimated weight of 58 pounds be approved for the purpose of calculating express charges on this commodity.

The application was launched in January, 1927, and comprised other features which are not pertinent to this inquiry but under the heading of "Eggs, Item 29," the following statement is made by the Chairman of the Express Traffic Association:—

"The present classification provides a billing weight of 55 pounds per case of eggs in 30-dozen containers. This weight basis is too low, being less than the average actual weight. . . . The railway carriers have established an estimated weight of 58 pounds per 30-dozen case by agreement with the dealers in eggs, and the express companies feel that the weight for similar cases moving via express should be established on the same basis."

The above is the approach which the association makes to the Board, and the reasons for asking the change specified.

Considerable evidence has been submitted in support of the position taken by the Express Traffic Association, and the weight of egg cases in various localities has been shown. Although in some instances the accuracy of the weight figures has been challenged, yet I think from the testimony before us, the most reasonable conclusion is that 58 pounds per case is nearer an average than 55 pounds, at which they are now being charged.

But there is another feature of the situation which in my view cannot be ignored, and which has considerable bearing upon the question, and that is, that the present estimated weight at 55 pounds was agreed to by the applicants and other parties in interest, namely, the shipping trade, which may fairly well be said to represent those who favour the lower rate.

The Canadian Produce Association has put a comprehensive memorandum on record over the signature of Clinton Henderson, Chairman of the Transportation Committee, and one paragraph thereof reads as follows:—

"In 1924 the express companies in Canada made application to the Board of Railway Commissioners for a general advance in express rates. By arrangement between the express companies and the produce dealers, certain commodity rates were arranged and agreed upon, to be effective until such time as the Railway Commissioners reviewed the whole express situation and revised all their rates. These commodity rates were based on the established shipping weight of 55 pounds to a 30-dozen case."

On the 7th day of March, 1928, the Toronto Produce Exchange unanimously passed the following resolution, copy of which is put upon the Board's record in answer to the application. It reads as follows:—

"Resolved that the request of the Canadian Express Traffic Association for permission to increase the billing weight of 30-dozen cases of eggs from 55 pounds to 58 pounds is a distinct breach of agreement. As the produce trade agreed with the Express Traffic Association to discontinue commodity rates in 1924 with the understanding that weights or rates on eggs would not be increased."

The Toronto Produce Exchange under date of February 21, 1930, renewed its protest against the proposed increase saying, *inter alia*, that there was a gradual change towards the use of lighter cases and that



"outside of this there has been no change in conditions since the egg trade agreed to the last increase in express rates which were only accepted in consideration of the shipping weight remaining at 55 pounds."

By communication to the Board of February 15, 1930, the general manager of the United Farmers' Co-Operative Company Limited of Ontario confirms the agreement, and indeed no attempt is made by the express association to deny the same, nor to demonstrate that any change in conditions has transpired to render its continuance unfair or unjust. The only ground taken by the Express Association is, that as a matter of fact the cases are heavier than 55 pounds and that the railways carry the same as freight on an estimated weight of 58 pounds. In my view this fact in itself would not justify the Board in annulling the agreement. It might well have been, as at first intended, that a general rate revision would have thrown the whole question of express rates into the melting pot, and adjustments been made here and there to meet different situations, and under such adjustments the agreement might have gone into discard.

In Mr. Henderson's memorandum alluded to above, it is stated, as a basis for the agreement which was come to in 1924, that for some years prior thereto the rate to Montreal from Toronto and practically all points west thereof, was \$1.20 per 100 pounds, and by the new rates then agreed upon, which were made effective September 1, 1924, the rate from Toronto to Montreal was increased from \$1.20 per 100 pounds, and the territory west of Montreal was divided into three zones—from zone No. 1 the carrying rate was made \$1.55; from zone No. 2, \$1.60; and from zone No. 3, \$1.70 per 100 pounds. He says that the rates mutually agreed upon by shippers and express companies represented a substantial increase in the above rates, of which the express companies have realized full benefit, and alleges that it is a distinct breach of agreement for the express companies to request permission to increase the shipping weight from 55 pounds to 58 pounds, before the Board examines the whole express rate field, for such is not justified by the average weight of egg cases throughout the year covering all movements.

In view of the record that has been built up, no reasonable question can be raised as to the fact that the agreement alluded to by Mr. Henderson was indeed entered into. It is not denied by the Express Traffic Association, and from many quarters come allegations of its existence, and the statements that, in connection with the carriage of eggs by express, certain rates were raised and others lowered and the agreement, as alleged, arrived at.

The weight of 55 pounds having been so arrived at and agreed upon, the same was approved by the Board, and it must be presumed that all parties had full knowledge of the circumstances when the weight of 55 pounds was arrived at.

There is no denial on the part of the companies that this agreement was entered into, and no reason given to the Board why it should be abrogated except that the weight of the egg cases exceeds the number of pounds they are being paid for carrying. Taking this as a fact, it existed, no doubt, at the time and immediately after the agreement, and has so continued ever since. From the evidence before us, if any change in the weight of egg cases has taken place, it is rather towards a lighter receptacle, and considerable testimony was given on that point. Various suggestions were made at the hearing, which was participated in by representatives of the federal Department of Agriculture. Mr. McLennan of that department said:—

"In the last three weeks I have weighed five different types of cases; I have these at the office now; I am going to put them up to the department and see which one will be accepted."

The oversight of the federal Department of Agriculture over the marketing of eggs is well known, and I think every opportunity should be given it, in



working out the problem which is before the egg producers. The weight of containers varies, and to me it is a significant fact that even at 55 pounds per case, the Canadian Express Companies are being paid for 2 pounds in excess of the weight calculated by the American Express Companies, operating within American territory. The disparity is found to exist largely, if not wholly, in the weight of the receptacle, or case, in which the eggs are packed. The container problem is now before the department of Agriculture, and if it can be satisfactorily solved there would be no necessity for any increase in rate at present, which is very much to be deplored by the egg producers.

Another difficult feature of the case presents itself in the fact that it was clearly shown at the hearing that a difference exists in the weight of eggs, as between the eastern and the western provinces. Various accounts and calculations have established a weight of 57·21 pounds on the 30-dozen egg cases in the western provinces, as against 61·23 pounds in the eastern provinces of Canada. The difficulty of framing regulations just to all parties is not unsurmountable, but in view of the investigations now being carried on by the department of Agriculture in regard to the receptacle in which the eggs are shipped, and in view of the admitted agreement under which the eggs are now being carried, and the undesirability of imposing, for the present, a further burden upon the industry, I think that this application should be dismissed.

January 28, 1931.

Deputy Chief Commissioner Vien concurred.

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ORDER NO. 46198

*In the matter of the application of the Express Traffic Association of Canada for an order of the Board authorizing in Express Classification for Canada No. 7, an increase in the billing weight of eggs in cases of 30-dozen capacity, from 55 pounds each to 58 pounds each.*

File No. 4397.47.

THURSDAY, the 29th day of January, A.D. 1931.

HON. H. A. McKEOWN, K.C., *Chief Commissioner.*

THOMAS VIEN, *Deputy Chief Commissioner.*

Upon reading the submissions filed on behalf of the Express Traffic Association of Canada, as well as many others shipping, and interested in the shipping of, eggs in express service, as well as the evidence offered, and what was adduced in this matter at the sittings of the Board held in Winnipeg, Man., March 12, 1930, Regina, Sask., March 14, 1930, Calgary, Alta., March 18, 1930, and Ottawa, Ont., November 13, and December 2, 1930,—

*The Board Orders:* That the application be, and it is hereby, dismissed.

H. A. McKEOWN,  
*Chief Commissioner.*

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*Application of the Village of Giffard, P.Q., for an Order directing the Quebec Railway, Light and Power, Limited, to reduce its fare to seven cents for passengers between the different stops from Giffard to the City of Quebec, on its Chateau Frontenac-Kent House tramway line.*

File No. 36984

JUDGMENT

DEPUTY CHIEF COMMISSIONER VIEN:

This application is for the extension of the Quebec city fares to the village of Giffard. At the present time, two fares are paid—one to the boundary of the city and the same fare additional for all points on the Kent House line running east for a distance of 4·3 miles.

The Quebec Railway, Light and Power Company originally had a line to Kent House connecting with the main line at Beauport Junction and reaching Quebec at St. Paul Street Station. Passengers from Giffard were then required to take the cars at Beauport Junction, about one-fifth of a mile distant from the present Giffard stop.

In order to give a high-class service in connection with city lines to Kent House (Montmorency Falls), the company, in 1924, constructed a line from Beauport Junction to the city limits, where connection was made with city lines, and thereafter service between Quebec city and Kent House and intermediate points was operated over the new line, fares for the line beyond the city being the same as established by agreement with the city, viz:—

Cash fare, 7 cents, 5 a.m. to midnight.

Tickets—Four for 25 cents; seventeen for \$1.

Children, under seven years, ten tickets for 25 cents.

Midnight to 5 a.m.—10 cents cash.

School children—Ten tickets for 25 cents.

Working men's tickets—Six for 25 cents, good only from 6 to 8 a.m. and 5 to 7 p.m. (except Sunday).

Passengers travelling between points in Quebec city and points on the Kent House line must, therefore, pay two fares—one to the city and one to the suburban line.

Giffard is a separate municipality, to the east of Quebec, the stop being one-half mile from the city boundary, and while the fare is the same to Kent House, 4.3 miles distant, this condition always exists in connection with group rates—persons close to the boundary do not receive the same amount of service as persons using the line to or from more distant points—the traffic is averaged.

The fare within the city is fixed by agreement, and outside the city there is a suburban service (extra service) for which payment should be made. The residents of Giffard pay no city taxes and are not, therefore, entitled to these city services.

Commutation tickets are still in effect on the old line from Beauport Junction to St. Paul Street Station, which makes the fare  $7\frac{1}{2}$  cents, and Mr. Reade states that 90 per cent of the residents living near Beauport Junction make use of this line, which brings them to the business section of Quebec and near the railway terminals and piers. The new line enters the city at a point not so convenient, and passengers would be required to use the city lines.

It is stated by complainants that if the excess fares were removed, land would be sold and the number of residents increased in Giffard—also that certain persons will move to the city if the double fare continues.

These considerations could hardly be considered by this Board when dealing with a question of the reasonableness of the rates or the question of discrimination.

The applicants request that Giffard be considered as a special zone and that a special rate be established proportionate to the distance to be covered within its territory, viz., one mile.

The company urged that this was impossible, owing to the fact that their cars were "pay-as-you-enter" and operated by one man, who would be unable to tell where a passenger got on and the amount of the fare to be collected.

The territory between the city limits and Kent House is 4.3 miles. It has about the same extent as the territory within the city limits. It does not appear unfair or unjust that the city be considered as one zone and the territory outside as another, and that a double fare be charged for those passing from one zone to the other. It is true that those living in the immediate vicinity of the city limits must pay a double fare to travel a very small distance. But this is also true of those travelling within the city limits who get on the street cars to ride for a few blocks only; they have to pay the same fare as if they rode the whole



length of the city. This is unavoidable. It is quite obvious that, if several zones were established, the man in charge of these "one-man cars" would not know whether a passenger got on within the city limits or within another zone, and it would become necessary to have two men in charge, which would entail a considerable additional expense which is not justified by the traffic.

If this application were granted and a special zone established for the first mile outside of the city limits which comprises the territory of the municipality of Giffard, other municipalities would have the same right to claim the establishment of other one-mile zones between the eastern boundary of Giffard and Montmerency Falls. This would create serious complications in the publication of tariffs, the issuance of tickets and the collection of fares. The line must be drawn somewhere, and I think it has not been improperly drawn by the company by dividing the territory in two zones, namely, one, the city of Quebec, and the other, the territory extending from the city limits to Montmorency Falls. It has not been shown that the double fare is an unreasonable toll for the additional service in the latter territory. No doubt, all these municipalities lying between Quebec and Montmorency Falls will sooner or later be annexed to the city of Quebec. Then they will come under the provisions of the agreement entered into between the tramway company and the city; but, for the time being, the company should be allowed to continue to collect an extra fare for the extra service performed. In my opinion, the application should, therefore, be dismissed.

OTTAWA, January 31, 1931.

Commissioners Norris and Stoneman concurred.

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ORDER No. 46228

*In the matter of the application of the Village of Giffard, in the province of Quebec, hereinafter called the "Applicant," for an Order directing the Quebec Railway, Light and Power Company to reduce its fare to seven cents for passengers, between the different stops from Giffard to the City of Quebec, on its Chateau Frontenac-Kent House Tramway Line.*

File No. 36984

TUESDAY, the 3rd day of February, A.D. 1931.

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*  
 Hon. T. C. NORRIS, *Commissioner.*  
 J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Quebec, June 4, 1930, and December 11, 1930, in the presence of counsel for the applicant and the railway company, and what was alleged; and upon the report of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the application be, and it is hereby, refused.

H. A. McKEOWN,  
*Chief Commissioner.*

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## ORDER No. 46150

*In the matter of the application of the Corporation of the City of Toronto, hereinafter called the "Applicant," for an Order directing the Canadian Pacific Railway Company to proceed with the construction of a subway at Lansdowne Avenue, on its North Toronto Subdivision, in accordance with the plan approved under the Order of the Board No. 35037, dated May 9, 1924, and to fix the time for the commencement and completion, of the said subway; and for an Order directing that 40 per cent of the cost of constructing the said subway be paid out of "The Railway Grade Crossing Fund," and that the remainder of the cost of construction be borne in the same way as was the cost of the subways constructed at Bloor Street and Royce Avenue;*

*And in the matter of the Order of the Board No. 45709, dated November 6, 1930, made herein.*

File No. 32453.8

MONDAY, the 19th day of January, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

C. LAWRENCE, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon its appearing that under the said Order No. 45709, dated November 6, 1930, paragraph 4, clause (c), the Board directed that the applicant, in addition to any other payment to be made by it under the said order, be responsible for the payment of such amount over and above the amount to be paid out of "The Railway Grade Crossing Fund," as provided by paragraph 4, clauses (a) and (b), of the said order, as shall be necessary to make up the full 40 per cent of the total cost of the work thereby required to be carried out; and, further, that by Order in Council P.C. 2582, dated the 5th day of November, 1930, the Governor General in Council did, at the instance of the applicant, authorize the transfer, to the credit of "The Railway Grade Crossing Fund," of the sum of \$100,000 to be specially used for the additional cost agreed to be borne by "The Unemployment Relief Fund" in addition to the amounts which by the said Order No. 45709, paragraph 4, clauses (a) and (b), the Board directed should be paid out of "The Railway Grade Crossing Fund" for the construction of the said subway,—

*The Board orders:* That, in addition to the amounts so to be paid out of "The Railway Grade Crossing Fund," there shall be paid out of the said sum of \$100,000 appropriated by the said Order in Council P.C. 2582 from "The Unemployment Relief Fund" such amount up to \$100,000 as shall be necessary to make up the full 40 per cent of the total cost of the work required by the said Order No. 45709 to be carried out; and that any amount so paid under this order shall be in satisfaction *pro tanto* of the obligation of the applicant under the said clause (c) of paragraph 4 of the said order of the Board No. 45709.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

## ORDER No. 46167

*In the matter of the application of the Memphis Freight Bureau, Memphis, Tennessee; Guy Tombs, Limited, Montreal, Quebec; the Canadian International Paper Company, Montreal, Quebec; and the New Brunswick International Paper Company, on behalf of various manufacturers, consumers, and dealers in newsprint paper, for an Order suspending changes and advances in the rates on newsprint paper, in carloads, from Canadian shipping stations to destinations in the United States; and the Order of the Board No. 42931, dated July 8, 1929, suspending certain tariff schedules in so far as they provide for changes and advances in the said rates;*

*And in the matter of the application of the Canadian National Railways for an amendment of the said Order No. 42931, dated July 8, 1929, in so far as it suspends Item 40-A of Supplement No. 1 to Tariff C.R.C. No. E-1403.*

File No. 24602.14

THURSDAY, the 22nd day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

THOMAS VIEN, K.C., *Deputy Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon reading the submissions filed on behalf of the Canadian National Railways, the Ontario Paper Company, Limited, and the Tribune Company of Chicago, as well as the evidence offered and what was adduced in this matter at the sittings of the Board held in Ottawa, April 10, 1930; May 12, 13, 14, 15, and 16, 1930; June 16, 17, 18, 19, and 20, 1930; October 7, 8, 9, 10, 11, 12, 13, 14, and 15, 1930; and November 24, 25, 26, 27, and 28, 1930,—

*The Board orders:* That the said Order No. 42931, dated July 8, 1929, be, and it is hereby, amended by removing the suspension therein directed in so far as it applies to item 40-A in Supplement No. 1 to Canadian National Railways Tariff C.R.C. No. E-1403, applying on newsprint paper, in carloads, from Thorold, Ontario, to Chicago, Illinois.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 46179

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

SATURDAY, the 24th day of January, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act, as follows, namely: —

Supplement 38 to Tariff C.R.C. No. E-1235.

Supplement 41 to Tariff C.R.C. No. E-1237.

Supplement 29 to Tariff C.R.C. No. E-1246.

S. J. McLEAN,

*Assistant Chief Commissioner.*

Re Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under  
General Orders 201 and 349

File No. 1700.338

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1930:—

(NOTE.—First two days over free time, \$1 per day; three days or more, \$5 per day.)

## EASTERN CANADA

Month, 1930	Total cars handled	Number released within free time	Per cent	Number held over free time	Per cent	Number held under 3 days over free time	Per cent	Number held 3 days or more over free time	Per cent
January.....	200,382	186,435	93-04	13,947	6-96	11,367	5-67	2,580	1-29
February.....	212,429	199,874	94-09	12,555	5-91	10,495	4-94	2,060	0-97
March.....	211,494	198,614	93-91	12,880	6-09	10,489	4-96	2,391	1-13
April.....	203,852	191,213	93-80	12,639	6-20	10,452	5-13	2,187	1-07
May.....	221,648	208,881	94-24	12,767	5-76	10,385	4-69	2,382	1-07
June.....	208,464	196,853	94-43	11,611	5-57	9,452	4-53	2,159	1-04
July.....	209,921	197,494	94-08	12,427	5-92	10,357	4-93	2,070	0-99
August.....	209,011	197,850	94-66	11,161	5-34	9,448	4-52	1,713	0-82
September.....	212,831	200,061	94-00	12,770	6-00	10,828	5-09	1,942	0-91
October.....	230,086	216,465	94-08	13,621	5-92	11,379	4-95	2,242	0-97
November.....	189,094	177,692	93-97	11,402	6-03	9,507	5-03	1,895	1-00
December.....	160,419	150,248	93-66	10,171	6-34	8,346	5-20	1,825	1-14
Total.....	2,469,631	2,321,680	.....	147,951	.....	122,505	.....	25,446	.....
Monthly Average.....	205,802	193,473	93-99	12,329	6-00	10,209	4-97	2,120	1-03

## WESTERN CANADA

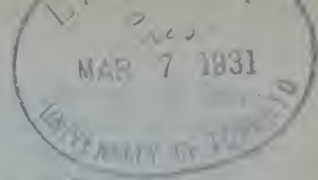
January.....	94,912	90,622	95-48	4,290	4-52	3,633	3-83	657	0-69
February.....	86,061	82,128	95-43	3,933	4-57	3,340	3-88	593	0-69
March.....	88,728	85,285	96-12	3,443	3-88	2,916	3-29	527	0-59
April.....	78,470	75,441	96-14	3,029	3-86	2,540	3-24	489	0-62
May.....	87,843	84,848	96-59	2,995	3-41	2,455	2-79	540	0-62
June.....	91,423	88,909	97-25	2,514	2-75	2,126	2-33	388	0-42
July.....	84,681	81,819	96-62	2,862	3-38	2,305	2-72	557	0-66
August.....	104,146	101,334	97-30	2,812	2-70	2,368	2-27	444	0-43
September.....	140,323	135,650	96-67	4,673	3-33	4,010	2-86	663	0-47
October.....	128,747	123,855	96-20	4,892	3-80	4,233	3-29	659	0-51
November.....	109,554	104,032	94-96	5,522	5-04	4,515	4-12	1,007	0-92
December.....	82,126	78,480	95-56	3,646	4-44	3,174	3-87	472	0-57
Total.....	1,177,014	1,132,403	.....	44,611	.....	37,615	.....	6,996	.....
Monthly Average.....	98,084	94,367	96-19	3,718	3-81	3,135	3-21	583	0-60

R. RICHARDSON,  
Assistant Secretary and Registrar.

OTTAWA, February 12, 1931.







The Board of  
**Railway Commissioners for Canada**

**Judgments, Orders, Regulations, and Rulings**

Vol. XX

Ottawa, March 1, 1931

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*In the matter of Electric Wires along and across Railways*

Case No. 4704

JUDGMENT

BY THE BOARD:

On the 6th day of May, 1918, a General Order of this Board, No. 231, was issued under the provisions of section 246 of the Railway Act as it then stood, adopting and confirming the conditions and specifications applicable to the erection, placing and maintaining of electric lines, wires or cables, along or across all railways subject to the jurisdiction of the Board as set forth in the schedule annexed to the said Order.

The powers given to the Board under the section above referred to are now continued by section 372 of the Railway Act, 1919, and the conditions and specifications embodied in General Order No. 231, with certain amendments, are still in force.

Complaints have been made against clause 3 of the said General Order, as well as against certain of the conditions contained in the schedule to such Order, being "The Standard Conditions and Specifications for Wire Crossings", part 1 of which deals with over-crossings.

In many instances in accordance with subsection 5 of section 372 of the Railway Act, mutual agreement between the railway company and the power company immediately involved, has rendered it unnecessary that application be made to the Board for permission to carry the transmission wires of light and power companies over the rights of way of railway companies, but it has frequently happened that under the provisions of section 372 above mentioned, such application has become necessary because no agreement could be arrived at under which such crossing could be made.

In view of certain objections made and terms insisted upon by the railway companies as a condition of such wire crossings, and erections in close proximity, it has been recognized by the Board that the subject-matter thereof must be given full consideration and a determination arrived at, and in the meantime for some years past, the Board's several orders allowing such crossings and erections have in all cases incorporated a clause therein making such permission subject to whatever conditions should be settled upon when decisions should be

made by the Board in the general application now under consideration, in respect of construction, maintenance and operation of power or electric lines or wires near, along or across railways.

The schedules attached to General Order No. 231 specify standard conditions and specifications for wire crossings, part 1 dealing with over-crossings, and part 2 thereof having to do with underground lines. This application has reference to the wording of clause (3) of the General Order, and to sections 1 and 2 of the conditions concerning over-crossings as set out in part 1 of the schedule, such conditions last above referred to being embodied in nine sections. It is suggested that No. 2 thereof is ineffective for proper protection of the railway company, whose right of way is sought to be crossed, and it is also contended that a further condition, to be known as No. 10, should be added thereto.

For the purpose of reference necessary in the discussion of this application, conditions 1 and 2, as well as paragraph 3 of General Order No. (231), as they now stand, are set out immediately hereunder:—

“GENERAL ORDER No. 231”

“3. That any Order of the Board granting leave to erect, place or maintain any line or lines, wire or wires, cable or cables, along or across any railway subject to the jurisdiction of the Board shall, unless otherwise expressed, be deemed to be an Order for leave to erect, place and maintain the same according to the conditions and specifications set out in that part of the said schedule applicable thereto, which conditions and specifications shall be considered as embodied in any such Order without specific reference thereto, subject, however, to such change or variation therein or thereof as shall be expressed in such Order.”

STANDARD CONDITIONS AND SPECIFICATIONS FOR WIRE CROSSINGS

*Part 1—Over-Crossings*

CONDITIONS

“1. The applicant shall, at its or his own expense, erect and place the lines, wires, cables, or conductors authorized to be placed along or across the said railway, and shall at all times, at its own expense, maintain the same in good order and condition and at the height shown on the drawing, and in accordance with the specifications hereinafter set forth, so that at no time shall any damage be caused to the company owning, operating or using the said railway, or to any person lawfully upon or using the same, and shall use all necessary and proper care and means to prevent any such lines, wires, cables or conductors from sagging below the said height.”

“2. The applicant shall at all times wholly indemnify the company owning, operating, or using the said railway, of, from, and against all loss, cost, damage, and expense to which the said railway company may be put by reason of any damage or injury to persons or property caused by any of the said wires or cables or any works or appliances herein provided for not being erected in all respects in compliance with the terms and provisions of this Order, as well as any damage or injury resulting from the imprudence, neglect, or want of skill of the employees or agents of the applicant.”

The railway companies complain that these conditions are not sufficiently protective. They say that while at present the power companies are required under condition No. 1 to maintain their lines, wires or cables in good order and condition, yet under the wording of No. 2 they are not compelled to indemnify the railway companies against loss occasioned them by failure of the power com-



panies to maintain the same in such good order and condition; that the requirements of clause 2 are confined to the Power Company's works and appliances being erected in compliance with the terms and provisions of the Order, but indemnification is not provided for loss occasioned by a failure on the part of the power company to maintain the same in good order and condition. In addition to such ground of complaint the railways have persistently put forward as their view, that the conditions should provide for their indemnification, not only for the reasons enumerated above, but for loss or damage howsoever caused.

Various conferences have been held between the parties in interest from time to time and certain amendments to the present conditions were put forward as a basis for discussion and consideration on the part of counsel for the railway companies and for the power companies. A proposed amendment to clause 2 of the conditions was submitted to the Board as follows:—

(The underlined portions in this and in other quoted paragraphs, show suggested changes).

"2. The applicant shall at all times wholly indemnify the company owning, operating or using the said railway of, from and against all loss, cost, damage and expense to which the said railway company may be put by reason of any damage or injury to person or property caused by any of the said wires or cables, or any works or appliances herein provided for, not being erected in all respects in compliance with the terms and provisions of this Order, (or if, when so erected, not being at all times maintained and kept in good order and condition and in accordance with the terms and provisions of this Order); as well as any damage or injury resulting from the imprudence, neglect or want of skill of the employees or agents of the applicant. Provided however, that the applicant shall not be required to indemnify the railway company from and against any loss or damage directly attributable to any act, default or negligence on the part of the railway company, its agents or employees.

"Nothing in this section shall deprive the railway company, or the applicant, of any remedy or right of action which either would otherwise have against the other for loss or damage resulting from the construction or maintenance of the said wires, cables or works."

In lieu of paragraph 3 of General Order No. 231, as it now stands, the same was submitted as follows:—

"3. That any order of the Board granting leave to erect, place or maintain any line or lines, wire or wires, cable or cables, along or across any railway subject to the jurisdiction of the Board, shall, unless otherwise expressed, be deemed to be an order for leave to erect, place and maintain the same according to the conditions and specifications set out in that part of the said schedule applicable thereto or as the same may be changed, varied or added to by future order of the Board, which conditions and specifications with such changes, variations and additions as may be ordered by the Board, shall be considered as embodied in any such order without specific reference thereto."

In order to meet the conditions as at present existing an additional paragraph 10 was submitted as follows:—

"10. The applicant shall as soon as possible and immediately after its head office has received information of the occurrence upon railway lands, along or across which its wires are constructed and maintained,

of any accident attended with personal injury to any person using the railway, or to any employee of the railway company, or which causes loss or damage to the railway company, give notice thereof by telegraph with full particulars, to the Board."

The above amendments and addition were taken by counsel as a basis of argument before the Board, and the contentions of the railways and of the power companies in respect thereto are indicated by their request that the paragraph and section so submitted should be subjected to alterations as follows:—

Mr. Hanna, counsel for the Hydro Electric Power Commission of Ontario, asked that clause 2 as last above written should be added to by inserting after the word "employees" where the same is first used, the words, "or to any failure on its or their part to maintain or operate properly its systems," and that the last five words of the clause be struck out and there be substituted therefor the words "works of the other party," so that as sought to be amended by the power companies, the new clause 2 of the conditions for over-crossings would read in its entirety as follows:—

"2. The applicant shall at all times wholly indemnify the company owning, operating or using the said railway of, from and against all loss, cost, damage, and expense to which the said railway company may be put by reason of any damage or injury to person or property caused by any of the said wires or cables, or any works or appliances herein provided for, not being erected in all respects in compliance with the terms and provisions of this Order (or if when so erected, not being at all times maintained and kept in good order and condition and in accordance with the terms and provisions of this Order), as well as any damage or injury resulting from the imprudence, neglect, or want of skill of the employees or agents of the applicant. Provided, however, that the applicant shall not be required to indemnify the railway company from and against any loss or damage directly attributable to any act, default, or negligence on the part of the railway company, its agents or employees, or to any failure on its or their part to maintain or operate properly its system.

"Nothing in this section shall deprive the railway company or the applicant, of any remedy or right of action which either would otherwise have against the other for loss or damage resulting from the construction or maintenance of the works of the other party."

As regards paragraph 3 of the General Order No. 231 Mr. Hanna asked that a proviso be added thereto, so that the same would read thus:—

"3. That any order of the Board granting leave to erect, place or maintain any line or lines, wire or wires, cable or cables, along or across any railway subject to the jurisdiction of the Board shall, unless otherwise expressed, be deemed to be an order for leave to erect, place and maintain the same according to the conditions and specifications set out in that part of the said schedule applicable thereto, which conditions and specifications shall be considered as embodied in any such order without specific reference thereto, subject, however, to such change or variation therein or thereof as shall be expressed in such order; subject always to the right of the Board, after notice to all parties and opportunity to be heard, to order at any time such changes or alterations to be made in connection with any such crossing as may to it seem advisable."



To clause 10 as proposed to be added to the conditions of over-crossing, Mr. Hanna suggested that there be inserted after the word "accident," in the 4th line of the clause the following words "connected with the works of the applicant," so that his amended paragraph 10 would read thus:—

"10. The applicant shall as soon as possible and immediately after its head office has received information of the occurrence upon railway lands, along or across which its wires are constructed and maintained, of any accident connected with the works of the applicant attended with personal injury to any person using the railway, or to any employee of the railway company, or which causes loss or damage to the railway company, give notice thereof by telegraph with full particulars to the Board."

Mr. Fraser, counsel for the Canadian National Railways, took the position that the railway companies should be fully indemnified for damage or loss arising from the overhead wire crossing, however occasioned, except when caused by negligence on the part of servants or agents of the railway company. He was willing to accept the proviso to that effect as proposed to be added to condition 2, if the suggested amended clause contained the indemnification clause. But if the Board were not prepared to acquiesce in such contention on his part, he submitted that clause 2 should read as follows:—

"2. The applicant shall at all times wholly indemnify the company owning, operating or using the said railway of, from and against all loss, cost, damage and expense to which the said railway company may be put by reason of any damage or injury to person or property caused by any of the said wires or cables or any works or appliances herein provided for, not being erected and at all times maintained in all respects in compliance with the terms and provisions of this Order, as well as any damage or injury resulting from the imprudence, neglect, or want of skill of the employees or agents of the applicant."

The wording contended for by each party, both in the conditions as existing and in the General Order, conforms to the respective contentions made, and they may be stated in the abstract very much more briefly than when set out in verbal alterations necessary to embody the contentions of each. The railway companies claim that being first upon the ground, they should be protected to the full against the new coming power companies which are carrying what is described as a dangerous load across their rights of way. They claim freedom of action within their own territory, that no obligation exists on their part to raise their standard of appliances to meet conditions brought about by high tension power wires crossing their land, that if damage should occur by accidental spilling of such power load the railway companies say such damage is caused by the presence of the power lines, and as the power lines are there by virtue of the Board's order, that such order should impose as a condition, that the railway companies' existing rights be preserved, and that they be indemnified against any and all loss to which they may be subjected by the presence of such power lines.

On the other hand, the power companies say that the supply of electricity is just as important within its limits, as railway facilities, and that if their lines and works are constructed with due regard to safety and with modern appliances, they should not be called upon to contribute to, or to carry a loss occasioned to the railways by something for which they are not responsible, including perhaps carelessness or negligence on the part of the railway company in not constructing their works to meet the advanced necessities of the day in regard to transmission of power.



It was agreed by Mr. Montgomery, counsel for the Canadian Electrical Association, that the Board is without power to impose conditions affecting liability between the railways and the power companies, inasmuch as such procedure might result in a declaration of liability at variance with the prevailing jurisprudence of the locality where an accident might occur. In the interest of public safety, the Board has not hesitated to exercise the powers apparently bestowed upon it by Parliament in dealing with this matter, and the standard conditions and specifications for wire crossing in existence to-day exemplify this. His objection includes not only the enlarged conditions suggested by Mr. Fraser, but several which are now in force and which have been in existence for a long while. Mr. Montgomery took the position that in all instances in which the prescribed conditions of crossing have effected or determined liability between the respective companies, the Board has been acting *ultra vires*.

In view of the course pursued by this Board, unchallenged for many years, it would not appear seemly to hastily abandon this ground, or to admit an improper exercise of power by the Board in this respect. The only authority for putting wires near, along or across railways takes its rise from section 372 of the Railway Act, and without leave of the Board, such construction is forbidden. With certain exceptions, not here pertinent, such wires cannot be constructed or maintained near, along or across railways, or along or across other lines, wires, etc., without the Board's permission. On application by a power company, for that purpose, subsection 3 of section 372. of the Railway Act, provides:—

“(3). The Board may grant the application and may order the extent to which, by whom, how, when, on what terms and conditions and under what supervision, the proposed work may be executed.”

Mr. Montgomery's contention is, that the above subsection amounts to a direction for the power companies to come to the Board in order to see that ordinary protective measures are adopted concerning such crossing, and that it is presupposed that the right to cross will be granted, care being taken to see that the crossing be made as safe as possible.

Considering the specific provisions of the subsection above referred to, and the uniform procedure of the Board thereunder, it is not proposed here and now to negative the Board's jurisdiction, especially in view of the fact that it is open to the power companies to correct the Board's procedure, if it has misdirected itself herein.

Mr. Montgomery further urged that, apart from the question of jurisdiction, the discretion of the Board should not be exercised to impose upon the power companies an excessive liability, and that should not be answerable for any mishap except that which might arise from their own negligence.

The position taken at the hearing by the different parties has been fully detailed above. Subsequent to the argument, lengthy consultations have taken place between the parties immediately in interest and Mr. John Murphy, the Board's Electrical Engineer, dealing with the above and various other phases of the problem. It goes without saying that each is influenced by regard for its own interest. While it is a matter of great concern to the Board to deal fairly between the interested companies in apportioning responsibility, and in setting up conditions under which their liability may be affected, there is a much more serious consideration overshadowing the whole question, for there emerges here a large issue which has to do with the safety of the public, to whom the dealings of the two companies are extraneous. I think we are to be guided in our determination rather by the safety of the public than by the incidence of pecuniary liability which may be occasioned by a failure or mishap in service.

Whatever would seem to be the safest course to pursue in order to accomplish this end should be followed.

While not contesting liability for damages caused by their own negligence, the plea is put forward by the power companies that a mishap arising from vis major and not in any way attributable to their own negligence, should not involve liability on their part. As between the two companies this seems not unreasonable, although it furnishes no answer to Mr. Fraser's query as to why the railways should shoulder such responsibility. The Board must pursue the course which is most likely to protect the public. In this whole situation there is a feature very difficult to define, which carries with it a danger, almost, if not altogether, impossible to foresee. The Board's duty should be to establish such regulations as will keep everybody concerned most astute to foresee and prevent accidents. Mr. Fraser, for the railways, says in effect: "We are content to bear responsibility for our own negligence, but anything apart from that we should not be called upon to answer for whether the accident occurs through vis major or otherwise howsoever." His acceptance of such burden would involve liability arising from accidents which may occur through a fault or defect in the railway system. He would be compelled to keep continually alert to know what the power companies are doing in the premises—what voltage they are carrying, and under what circumstances they are crossing or paralleling the right of way at every point.

A further unescapable duty rests upon the railways to maintain their own wires, telegraph and telephone signals and other electric systems in good order and condition, and in such a way as to co-ordinate them with those of the power companies which may cross the rights of way. Methods previously well adapted to carry electrical loads in safety have had to be abandoned before now, and in all probability, existing systems will go into the discard to be replaced by others more efficient. If nothing more were at issue than the immediate result to the companies themselves, the Board would not feel under the same degree of responsibility to the public which the potential danger from high-tension power wires gives rise to, and the conditions in regard to them must be set up in accordance with this responsibility. In the opinion of the Board, the liability of the power company should not be limited to mishaps concerning which it can be shown to be at fault; unusual or accidental breakdowns in electric power systems, in common with a variety of disastrous occurrences, sometimes completely destroy all evidence of their cause. Except where carelessness, negligence, or whatever the cause of the mishap may be, can be traced to the railway company, the interest of all parties, and particularly the interest of the public, would appear to be most certainly and justly safeguarded by holding the power company—the only party in possession of knowledge of what is going on in its own system, and the only one in position to control it—liable for damage or injury done by its system. And there is this further to be said, namely, that it is by the act of the power companies in crossing, or coming near, the rights of way that the danger of accidents, even of some of those which might arise from vis major, are called into existence. It might be impossible in the event of damage or injury to draw a clear distinction between what might be termed carelessness on the part of the power company and vis major, which latter, not infrequently, reduces itself into a question of what might be avoided by the use of what may be termed excessive care. It seems conclusive that public safety will be ensured, if the power companies are held liable for any damage or injury their systems may cause, even if it be difficult or impossible to accurately locate the reason for the mishap. The power companies must set up the most complete barrier against a breakdown. They must cross the right of way without spilling their dangerous load and, if they do so, and damage results, they must be held liable therefor.

The conditions providing for the liability of the railway companies arising from their own negligence involves the obligation to provide themselves with a high standard of equipment and to maintain their whole operation at such a



point that the consequence of a mishap on the part of the power company will be nullified if a high standard of efficiency on the part of the railway can produce that result. It should not be open to the railways to content themselves with equipment outworn or out of date, and therefore liable to destruction under conditions when danger and loss could be prevented by the adoption of more modern methods. It is always the duty of an employer to provide his workmen with a proper place to work and the proper materials for carrying on the operation, and such duty is not performed by putting into their hands inadequate machinery, or placing them in conditions which are fraught with danger avoidable by reasonable care, and, if this obligation runs from employer to workmen, still more strongly should it be invoked for the protection of those who are strangers to the business which is being carried on. The passenger upon a railway train which, under conceivable circumstances might be wrecked through an accident to the high power tension line, is rightly upon the company's premises; he has paid for his right to be there, and he is entitled to the highest degree of protection while in such position. If, therefore, an accident or disability occur in the power company's system, and damage or injury to the railway be consequently done, even though for any reason the cause of the accident or disability cannot be definitely located, as between the railway and the power company, the latter should be held responsible, for the reason that the loss suffered will have been occasioned by the presence of the power companies' wires or cables near, over or along the right of way of the railway.

Regarding as vitally essential the safety of persons outside the circle of either company, and desiring to frame conditions most likely to ensure to them immunity from danger and loss, the Board is of opinion that this result can be best assured by placing upon the shoulders of the company carrying a dangerous load across the right of way, a primary obligation to bear it safely across the railway property, unless the negligence of the latter company should operate to cause the power wires to spill their load.

If, therefore, an accident or disability occur, due to an escape of electric power and for any reason its cause cannot be definitely located as between the railway company and the power company, the latter should be held responsible, for the reason that the loss suffered will have been occasioned by the passage of the power company's wires over or along those of the railway company. If they had not been there the occurrence would not have taken place. The conditions of carrying the power companies' lines across or along the railways should be framed in accordance with what is above stated, that is to say, except in cases where loss or damage to the railway company is directly attributable to any act, default or negligence on the part of such railway company, its agents or employees, the applicant shall at all times wholly indemnify the company owning, operating or using the railway, from and against all loss, cost, damage, injury and expense to which the railway company may be put by reason of any damage or injury to persons or property caused by any of the said applicant's wires or cables, or any works herein provided for by the terms and provisions of this order as well as against any damage or injury resulting from the imprudence, neglect or want of skill of the employees or agents of the applicant, unless the cause of such loss, cost, damage, injury or expense can be traced elsewhere.

In result, therefore, paragraph 2 of the

“STANDARD CONDITIONS AND SPECIFICATIONS FOR WIRE CROSSINGS

“Part 1—Over-Crossings

“CONDITIONS”

will be amended to read as follows:—

“2. The applicant shall, at all times, wholly indemnify the company owning, operating or using the railway, from and against all loss,



damage, injury and expense to which the railway company may be put by reason of any damage or injury to persons or property, caused by any of the said applicant's wires or cables, or any works herein provided for by the terms and provisions of this order, as well as against any damage or injury resulting from the imprudence, neglect or want of skill of the employees or agents of the applicant, unless the cause of such loss, cost, damage, injury or expense can be traced elsewhere."

To the conditions as at present, there will be added two additional paragraphs to be numbered 10 and 11, reading as follows:—

"10. The applicant shall as soon as possible and immediately after its head office has received information of the occurrence upon railway lands, along or across which its wires are constructed and maintained, of any accident attended with personal injury to any person using the railway, or to any employee of the railway company, or which causes loss or damage to the railway company, give notice thereof by telegraph with full particulars, to the Board."

"11. Nothing herein shall deprive the railway company, or the applicant, of any remedy or right of action either would otherwise have against the other, for loss or damage resulting from the construction or the maintenance of the said wires, cables or other works covered by the order."

A. D. CARTWRIGHT,  
*Secretary.*

OTTAWA, February 5, 1931.

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GENERAL ORDER NO. 490

*In the matter of section 372 of the Railway Act, and the General Order of the Board No. 231, dated May 6, 1918, as amended by General Order No 291, dated April 7, 1920, adopting the "Rules for Wires Erected Along or Across Railways."*

Case 4704

FRIDAY, the 20th Day of February, A.D. 1931.

Hon. H. A. MCKEOWN, K.C., *Chief Commissioner.*

S. J. McLEAN, *Assistant Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, February 7, 1928, in the presence of counsel for and representatives of the Canadian National and the Canadian Pacific Railway Companies, the Michigan Central Railroad Company, Canadian Electric Railway Association, Toronto Transportation Commission, Ottawa Electric Company, Canadian Electrical Association, Montreal Light, Heat and Power Company, Shawinigan Water Power Company, Gatineau Light and Power Company, Southern Canada Power Company, New Brunswick Electric Power Commission, Hydro-Electric Power Commission of Ontario, and the Bell Telephone Company of Canada, and what was alleged; and upon reading the written submissions filed on behalf of parties interested,—

*The Board Orders:* 1. That the "Rules For Wires Erected Along or Across Railways," adopted by the said General Order No. 231, dated May 6, 1918, as amended by General Order No. 291, dated April 7, 1920, be, and they are

hereby, further amended by striking out paragraph 2 of "PART I, OVERCROSSINGS," and substituting in lieu thereof the following, namely:—

"2. The applicant shall at all times wholly indemnify the company owning, operating, or using the railway from and against all loss, damage, injury, and expense to which the railway company may be put by reason of any damage or injury to persons or property caused by any of the said applicant's wires or cables, or any works herein provided for by the terms and provisions of this Order, as well as against any damage or injury resulting from the imprudence neglect, or want of skill of the employees or agents of the applicant, unless the cause of such loss, cost, damage, injury, or expense can be traced elsewhere."

2. That the said "Rules for Wires Erected Along or Across Railways," be further amended by adding after paragraph 9 of the said "PART I, OVERCROSSINGS," the following paragraphs, namely:—

"10. The applicant shall, as soon as possible, and immediately after its head office has received information of the occurrence upon railway lands along or across which its wires are constructed and maintained, of any accident attended with personal injury to any person using the railway, or to any employee of the railway company, or which causes loss or damage to the railway company, give notice thereof by telegraph, with full particulars, to the Board.

"11. Nothing herein shall deprive the railway company, or the applicant, of any remedy or right of action either would otherwise have against the other, for loss or damage resulting from the construction or the maintenance of the said wires, cables, or other works covered by the order."

H. A. McKEOWN,  
Chief Commissioner.

*Application of the Howell Forwarding Company, Limited, Toronto, for a ruling of the Board concerning the rating applicable under the provisions of the Canadian Freight Classification, on electric motors to be used as replacement parts for washing machines, such motors being included in a fifth-class car shipped under the distinctive heading of "Hardware."*

File No. 37351

BY THE BOARD:

This matter has been presented to the Board by written submissions filed by the applicant and reply thereto by Chairman Thompson of the Canadian Freight Association, Winnipeg. It is stated the carload shipment in question, which moved from Toronto, Ontario, to Vancouver, B.C., in December, 1929, consisted of some 38,110 pounds of articles provided for under the distinctive heading of "Hardware," pages 153 to 169, inclusive, of Canadian Freight Classification No. 18, together with a baker's table, K.D., crated, a box of paint brushes, a box of "engine repairs," and nine cartons of electric motors. The only question here presented relates to the rating applicable on the electric motors, the rating on which was raised by the Canadian Freight Association from 5th class to 1st class. It is stated the car contained, amongst other things, twenty-five washing machines, crated. It is not claimed that the motors in question were for use in connection with any of the washing machines contained in this car, but were to be used as replacement parts for washing machines.

The contention of applicant is as follows:—

"We take the stand that these motors are parts of a washing machine, and that they were not for sale as motors but for sale as washing machine parts. The machine would not function without the motor. The motors were not for resale as motors, but as replacement parts for



the machine, and as such, we claim they have the same right to be classified fifth class as any other machine parts. We think our contention is borne out by provision and the rule of analogy, by reference to page 47, item 15, where agricultural implement parts are all given a rating of fifth class, the same as the implements."

The rule governing shipments of different articles in mixed carloads from points east of Port Arthur to points west thereof, is section 2 of rule 10, which stipulates that:—

"Articles under different DISTINCTIVE HEADINGS, or articles that are not classified under DISTINCTIVE HEADINGS, will not be taken in mixed carloads at carload rates."

Washing machines (the complete article), hand and other than hand, are provided for under the distinctive heading "Hardware," at carload rating of 5th class. Washing machine parts (distinct from the complete article) are not provided for under the heading of "Hardware." Machinery and machine parts, not otherwise indexed by name, are provided for by items 10 to 13 on page 202. Motors and parts are specifically covered by item 7, page 111, and this latter item applies on electric motors used as replacement parts, while other machine parts, unless otherwise specifically provided for, are covered by the items on page 202. The items on pages 111 and 202, here referred to, are not under the heading "Hardware."

Attention might be directed to note 3 on page 188 under the heading of "Machinery and Machines," wherein it will be observed that, amongst other things, motors, when necessary for the initial equipment of such machinery or machines as are made subject to note three, will, if shipped in mixed carloads with such machinery or machines, be taken at the carload rating and the carload minimum weight applicable on such machinery or machines. Shipments of electric motors used as replacement parts on such machinery or machines, are excluded from mixed carloads of machinery, and item 7, page 111, would be applicable.

Applicant's reference to item 15, page 47, covering agricultural implement parts, would not seem relevant as bearing on the provisions of the classification in so far as they concern the question here raised. Agricultural implements are rated 6th class in carloads, pages 42 to 44. Agricultural implement parts are rated 5th class, in carloads, pages 45 to 47. There is a specific provision on page 45, item 1, for mixed carloads of agricultural implements and agricultural implement parts at rating of 5th class, provided that the weight of the parts does not exceed one-quarter of the load. There is, therefore, a specific provision under the conditions set out for the inclusion of agricultural implement parts with agricultural implements in mixed carloads, although at the higher rating applicable on the implement parts.

Applicant makes reference to the rule of analogy (rule 21), which provides that when articles which are not classified are offered for transportation, agents will bill same at the ratings provided for analogous articles. This rule is inapplicable, in so far as concerns the question here presented, as electric motors are specifically classified.

#### RULING

The ruling of the Board, therefore, is that electric motors, or other washing machine parts, are not provided for under the heading of "Hardware," consequently, there being no provision for the inclusion of electric motors or machinery parts under the heading of "Hardware," item 7, page 111, was applicable with respect to the motors contained in this shipment, and the proper rating thereon was, consequently, the less than carload rating of 1st class.

A. D. CARTWRIGHT,

*Secretary.*

OTTAWA, February 13, 1931.



## ORDER No. 46218

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

FRIDAY, the 30th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.**The Board orders:*

1. That the toll published from Halifax, Nova Scotia, to Bridgetown, Nova Scotia, in item 8-B of Supplement No. 29 to Tariff C.R.C. No. 783, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll, which but for the said Act would have been effective in lieu of that published in the said item 8-B of the Supplement No. 29 to Tariff C.R.C. No. 783, approved herein, is 22½ cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46219

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.* File No. 34822.2

FRIDAY, the 30th day of January, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Assistant Chief Commissioner.**The Board orders:*

1. That the tolls published in Supplement No. 39 to Tariff C.R.C. No. E-1235, Supplement No. 30 to C.R.C. No. E-1240, and Supplement No. 8 to C.R.C. No. E-1261, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46217

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.* File No. 34822.2

MONDAY, the 2nd day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 6 to Tariff C.R.C. No. E-1252 and Supplement No. 10 to C.R.C. No. E-1256, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46220

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 3rd day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board Orders:* That the tolls published in Supplement No. 14 to Tariff C.R.C. No. E-1247, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46239

*In the matter of the application of the Canadian Pacific Railway Company for an Order extending the time within which it was directed, under the Order of the Board No. 45835, dated November 26, 1930, to construct interchange tracks between its railway and the Canadian National Railways at Prince Albert, Saskatchewan:*

File No. 6713.234

WEDNESDAY, the 4th day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
Hon. T. C. NORRIS, *Commissioner.*  
J. A. STONEMAN, *Commissioner.*

Upon reading what is filed in support of the application and the consent of the Prince Albert Board of Trade and the Department of Railways, Labour and Industries of the province of Saskatchewan, filed; and upon the report and recommendation of the Assistant Chief Engineer of the Board,—

*It is ordered:* That the time within which the said interchange tracks may be constructed and completed be, and it is hereby, extended until the 1st day of June, 1931.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46234

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

THURSDAY, the 5th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*  
J. A. STONEMAN, *Commissioner.*

*The Board orders:*

1. That the tolls published in item No. 138 of Supplement No. 11 to Tariff C.R.C. No. 4368, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for said Act would have been effective in lieu of those published in the said item No. 138 of Supplement No. 11 to Tariff C.R.C. No. 4368, approved herein, are as follows:—

To:	Rates in cents per 100 lbs.	
	In boxes or crates	In bundles
Banff, Alberta.. . . . .	530	796
Brandon, Manitoba.. . . . .	363	545½
Calgary, Alberta.. . . . .	518	778
Edmonton, Alberta.. . . . .	518	778
Fort William, Ontario.. . . . .	266	400
Lethbridge, Alberta.. . . . .	500	751
Moose Jaw, Saskatchewan.. . . . .	428	643
Port Arthur, Ontario.. . . . .	266	400
Red Deer, Alberta.. . . . .	522	784
Regina, Saskatchewan.. . . . .	417	626½
Revelstoke, British Columbia.. . . . .	568	851½
Saskatoon, Saskatchewan.. . . . .	444	667
Winnipeg, Manitoba.. . . . .	326	490

S. J. McLEAN,  
Assistant Chief Commissioner.

ORDER No. 46235

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:* File No. 34822.12

THURSDAY, the 5th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*  
J. A. STONEMAN, *Commissioner.*

*The Board orders:*

1. That the tolls published in item No. 443 of Supplement No. 3 to Tariff C.R.C. No. E-4370, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item No. 443 of Supplement No. 3 to Tariff C.R.C. No. E-4370, approved herein, are as follows:—

	Rates in cents per 100 lbs.
In boxes or crates.. . . . .	611
In bundles.. . . . .	917½

S. J. McLEAN,  
Assistant Chief Commissioner.

ORDER No. 46236

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:* File No. 34822.2

THURSDAY, the 5th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*  
J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 28 to Tariff C.R.C. No. E-1244, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,  
Assistant Chief Commissioner.



## ORDER No. 46250

*In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for authority to operate their trains over the interchange tracks constructed between their railway and the railway of the Canadian Pacific Railway Company at Arnprior, Ontario, under the Order of the Board No. 45769, dated November 14, 1930:*

File No. 27235

FRIDAY, the 6th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, concurred in by its Chief Engineer,—

*The Board orders:* That the applicants and the Canadian Pacific Railway Company be, and they are hereby, authorized to operate their trains over the said interchange tracks at Arnprior, Ontario.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 46240

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under section 276 of the Railway Act, for leave to carry traffic over its Ridgedale Northeasterly Branch from a point on the Brooksby subdivision, at mileage 23·70, to present end of steel at mileage 52·65; a distance of 28·95 miles; also for permission to flag trains over the crossing of the Canadian Pacific Railway, about four miles north of Ridgedale, which crossing was approved by Order No. 44525, dated March 28, 1930; pending the installation of automatic signals at the crossing:*

File No. 37167.12

SATURDAY, the 7th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:*

1. That the applicant company be, and it is hereby, authorized to carry traffic over its Ridgedale Northeasterly Branch from a point on the Brooksby Subdivision at mileage 23·70, to present end of steel at mileage 52·65, a distance of 28·95 miles: Provided the rate of speed shall not exceed twelve miles an hour.

2. That, pending the installation of automatic signals at the crossing of the Canadian Pacific Railway by the applicant company's railway about four miles north of Ridgedale, Saskatchewan, the applicant company be, and it is hereby, authorized to operate its trains over the said crossing on flag.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 46246

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

MONDAY, the 9th day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 14 to Tariff C.R.C. No. E-1239 and Supplement No. 6 to Tariff C.R.C. No. E-1504, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46264

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

TUESDAY, the 10th day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item No. 573 of Supplement No. 36 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item No. 573 of Supplement No. 36 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

To:	Rates in cents per 100 lbs.	
	In boxes or crates	In bundles
Belleville, Ont. . . . .	125½	189
Brantford, Ont. . . . .	135½	216
Brockville, Ont. . . . .	121½	183
Chatham, Ont. . . . .	157	236½
Cobalt, Ont. . . . .	190½	286½
Cochrane, Ont. . . . .	208½	313½
Cornwall, Ont. . . . .	121½	183
Edmundston, N.B. . . . .	108½	163½
Fredericton, N.B. . . . .	99	149½
Hamilton, Ont. . . . .	136½	205½
Iroquois Falls, Ont. . . . .	208½	313½
Kingston, Ont. . . . .	125½	189
Kitchener, Ont. . . . .	135½	216
Lindsay, Ont. . . . .	132	199
London, Ont. . . . .	150½	226½
Midland, Ont. . . . .	135½	216
Montreal, Que. . . . .	118½	178½
New Liskeard, Ont. . . . .	193½	291
Niagara Falls, Ont. . . . .	139½	210
North Bay, Ont. . . . .	139½	210
Ottawa, Ont. . . . .	121½	183
Pembroke, Ont. . . . .	121½	183
Perth, Ont. . . . .	121½	183

To:	Rates in cents per 100 lbs.	
	In boxes or crates	In bundles
Peterboro, Ont. . . . .	128½	193½
Quebec, Que. . . . .	114½	172½
Renfrew, Ont. . . . .	121½	183
St. Catharines, Ont. . . . .	139½	210
St. Jovite, Que. . . . .	121½	183
Sault Ste. Marie, Ont. . . . .	164½	247½
Sherbrooke, Que. . . . .	118½	178½
Sudbury, Ont. . . . .	150½	226½
Timmins, Ont. . . . .	208½	313½
Toronto, Ont. . . . .	132	199
Trenton, Ont. . . . .	125½	189
Victoria Park, Ont. . . . .	139½	210
Woodstock, Ont. . . . .	146½	220½

H. A. McKEOWN,  
*Chief Commissioner.*

ORDER No. 46266

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.12

TUESDAY, the 10th day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Asst. Chief Commissioner.*

*The Board orders:*

1. That the tolls published in item No. 113 of Supplement No. 12 to Tariff C.R.C. No. E-4368, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item No. 113 of Supplement No. 12 to Tariff C.R.C. No. E-4368, approved herein, are as follows:—

To:	From:	
	West St. John, N.B.	Halifax, N.S.
	St. John, N.B.	
	St. Andrews	Halifax, N.S.
	Rates in cents per 100 lbs.	
Port Arthur, Ont. . . . .	75	75½
Fort William, Ont. . . . .	75	75½
Winnipeg, Man. . . . .	83	83
Brandon, Man. . . . .	90	90
Regina, Sask. . . . .	102	102
Moose Jaw, Sask. . . . .	105	105
Prince Albert, Sask. . . . .	111	111
Saskatoon, Sask. . . . .	108	108
Lethbridge, Alta. . . . .	121	121
Edmonton, Alta. . . . .	126	126
Calgary, Alta. . . . .	126	126
Strathcona, Alta. . . . .	126	126

H. A. McKEOWN,  
*Chief Commissioner.*



## ORDER No. 46267

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.15

THURSDAY, the 12th day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*  
S. J. McLEAN, *Assistant Chief Commissioner.*

*The Board orders:*

1. That the toll published in item No. 205 of Supplement No. 26 to Tariff C.R.C. No. 157, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of that published in the said item No. 205 of Supplement No. 26 to Tariff C.R.C. No. 157, approved herein, is 4½ cents per 100 pounds.

H. A. McKEOWN,  
*Chief Commissioner.*

## ORDER No. 46299

*In the matter of the application of the Kettle Valley Railway Company, hereinafter called the "Applicant Company," for approval of Supplement No. 1 to its tariff C.R.C. No. 385, cancelling tariff C.R.C. No. 385, on file with the Board under file No. 10262.2.*

WEDNESDAY, the 18th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*  
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said Supplement No. 1 to the applicant company's Tariff C.R.C. No. 385, on file with the Board under file No. 10262.2, be, and it is hereby approved.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD  
OF RAILWAY COMMISSIONERS, FOR MONTH OF NOVEMBER, 1930

Railway Accidents.. . . . . 178, involving 20 persons killed and 173 injured.  
Railway Accidents at highway crossings.. 33, involving 15 persons killed and 43 injured.

	Killed	Injured
Passengers.. . . . .	—	25
Employees.. . . . .	5	122
Others.. . . . .	30	69
	35	216

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

PROVINCE OF PRINCE EDWARD ISLAND

Accidents

2 Automobile—P.E.I. Licences 3-523, 4942.

PROVINCE OF NOVA SCOTIA

1 Automobile—Ran into side of train: N.B. Licence 17-396.

PROVINCE OF NEW BRUNSWICK

1 Automobile—N.B. Licence 17675.

PROVINCE OF QUEBEC

5 Automobile—Failed to stop for crossing: Que. licences 122-175, H-8188, T-6739,  
M-1804; Ont. OL-953.

1 Automobile—Stalled on crossing: Maine licence H-2082.

2 Automobile—Licences Que. A-89; N.Y. 8-P-4711.

1 Wagon.

PROVINCE OF ONTARIO

3 Automobile—Ran into side of train: Ont. licences, 15-225C, N-5785, LK-637.

1 Automobile—Defective brakes: Ont. licence C-91.

1 Automobile—Excessive speed of auto: Ont. licence BF-248.

1 Automobile—Stalled on crossing: Ont. licence S-1895.

1 Automobile—Attempted to beat train: Ont. licence ET-168.

5 Automobile—Ont. licences JT-613, J-1551, LE-604, 39819-C, 3269-C.

1 Pedestrian.

PROVINCE OF MANITOBA

1 Automobile—Ran into side of train: Man. licence 17312.

1 Automobile—Man. licence 102-618.

PROVINCE OF ALBERTA

1 Automobile—Attempted to beat train: Alta. licence 84-616.

1 Automobile—Alta. licence C-30-14-126.

1 Pedestrian.

PROVINCE OF SASKATCHEWAN

1 Automobile—Ran into side of train: Sask. licence 93-500.

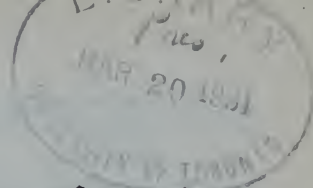
1 Automobile—Sask. licence T-5857.

Of the thirty-three accidents at highway crossings, six occurred at protected crossings and twenty-seven at unprotected crossings. Eighteen of the accidents occurred during daylight hours and fifteen during the night hours.

OTTAWA, February 18, 1931.







# The Board of Railway Commissioners for Canada

## Judgments, Orders, Regulations, and Rulings

Vol. XX

Ottawa, March 15, 1931

No. 28

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*In the matter of Electric Wires Along and Across Railways.*

Case No. 4704

JUDGMENT OF THE BOARD, DATED FEBRUARY 5, 1931, REPORTED IN VOL. XX, No. 27,  
MARCH 1, 1931, PAGE 365

### ERRATA

The word "persistantly" in the sixth line of page 367 should be "persistently."

The word "agreed" in the first line at the top of page 370 should read "argued."

Add the word "they" after the word "that" and before the word "should" in the fifteenth line from the bottom of page 370.

The word "responsibility" in the seventh line from the bottom of page 370 should be "responsibility."

Add the word "best" after the word "will" and before the word "be" in the ninth line from the bottom of page 371.

*Electric Wires Along and Across Railways.—Terms of Orders issued by the Board in respect of the crossing of Railways by power lines, and as to the claim of Railway companies to indemnification against liability.*

(Case 4704)

### JUDGMENT

VIEN, DEPUTY CHIEF COMMISSIONER:

Under the Railway Act 1919 (R.S.C. 1927, c. 170), the following is provided:—

S. 372 (1) Lines, wires, other conductors, structures or appliances for telegraphic or telephonic purposes, or for the conveyance of power or electricity for other purposes, shall not, without leave from the Board, be constructed or maintained:

- (a) Along or across a railway, by any company other than the railway company owning or controlling the railway; or

(b) Across or near other such lines, wires, conductors, structures or appliances, which are within the legislative authority of the Parliament of Canada.

(3) The Board may grant the application and may order the extent to which, by whom, how, when, on what terms and conditions, and with what supervision the works may be executed.

(5) Leave of the Board under this section shall not be necessary . . . when works have been or are to be constructed or maintained by consent and in accordance with any general orders, regulations, plans or specifications adopted or approved by the Board for such purposes.

## II

By its General Order No. 231, of the 6th of May, 1918, and amendments thereto, the Board made Rules and Regulations and fixed standard conditions and specifications regarding the electric wires along and across railways, in part, as follows:—

### GENERAL ORDER NO. 231

“3. That any order of the Board granting leave to erect, place, or maintain any line or lines, wire or wires, cable or cables, along or across any railway subject to the jurisdiction of the Board, shall, unless otherwise expressed, be deemed to be an order for leave to erect, place and maintain the same according to the conditions and specifications set out in that part of the said schedule applicable thereto, which conditions and specifications shall be considered as embodied in any such order without specific reference thereto, subject, however, to such change or variation therein or thereof as shall be expressed in such order.”

#### STANDARD CONDITIONS AND SPECIFICATIONS FOR WIRE CROSSINGS PART 1.—OVER-CROSSINGS

##### *Conditions*

1. The applicant shall, at its or his own expense, erect and place the lines, wires, cables, or conductors authorized to be placed along or across the said railway, and shall at all times, at its or his own expense, maintain the same in good order and condition and at the height shown on the drawing, and in accordance with the specifications hereinafter set forth, so that at no time shall any damage be caused to the company, owning, operating or using the said railway, or to any person lawfully upon or using the same, and shall use all necessary and proper care and means to prevent any such lines, wires, cables, or conductors from sagging below the said height.

2. The applicant shall at all times wholly indemnify the company owning, operating or using the said railway of, from, and against all loss, cost, damage, and expense to which the said railway company may be put by reason of any damage or injury to persons or property caused by any of the said wires or cables or any works or appliances herein provided for not being erected in all respects in compliance with the terms and provisions of this order, as well as any damage or injury resulting from the imprudence, neglect, or want of skill of the employees or agents of the applicant.

## III

The Canadian National and the Canadian Pacific Railway Companies allege that these conditions are unsatisfactory and inadequate; that the construction, maintenance and operation of high potential wires across their right

of way is a source of gravest danger to themselves and their patrons, even when such wires are erected in accordance with the orders and specifications of the Board, and properly protected so far as human foresight can provide; that, under sections 45, 372 and other relevant sections of the Railway Act, the Board, as a condition to the granting of such applications, should require the power companies to assume the risk of all resultant damage to the railway company's property, and to the persons and property of its patrons, due to any cause whatsoever, even exceptional and uncontrollable, as the act of God, a hurricane or lightning, etc., and should keep the railway company absolutely indemnified and insured against everything but the negligence of its own servants and agents.

The applicants therefore request that clause 2 of the standard conditions hereinabove quoted be amended accordingly.

#### IV

The Ontario Hydro-Electric Power Commission and several power companies oppose this application and submit that all Canadian legislatures, federal and provincial, and every Parliament in the civilized world, have now recognized as a well-defined principle of public policy, that when a company is incorporated by competent authority to fulfill a public demand, it should not be submitted to any exceptional or extraordinary liability, but should be held to account only to use the greatest possible care consistent with the handling of the dangerous commodity with which it is duly authorized to supply the public; that the railway companies themselves, though they introduce by their construction and operation, many new elements of danger, receive exceptional powers which, if carried out in a proper and efficient manner, do not involve any liability except for the damages due to the negligence of their own employees or agents; that, similarly, power companies are vested with statutory authority to transmit dangerous electric currents and, when properly exercising such authority, they are liable only when damages arise out of their negligence; that this general policy of law has been adopted to meet the requirements of our modern conditions of living, and it could not now be discarded without seriously retarding the advancement and development of science and industry, there being hardly a public utility which does not involve a new element of danger; that in fixing the terms and conditions on which leave can be granted to these companies to cross or parallel a railway right of way, this Board should refrain from interfering with or changing these fundamental principles of common law which are applicable to all public utilities, including power transmission lines.

#### V

The question of the liability in damages, due to negligence or otherwise, is a matter which, under the provisions of the British North America Act, falls within the jurisdiction of provincial legislatures, except when it is necessarily incidental to the proper carrying into effect of laws enacted by the Dominion Parliament. The functions of this Board are judicial and administrative; they are not legislative. Its powers to impose a liability in damages must be found within the four corners of the Railway Act.

This Board has uniformly held that the question of damages is a matter for the courts and not for the Board. As early as 1904, in the York Street Bridge case, the late Chief Commissioner Blair, who was Minister of Railways and Canals when this Board was created, made the following statement: "We must again emphasize the opinion that it is not within our province, in administering the Act which constitutes this Board, to attempt to provide remedies or afford



relief in cases in which said relief and said remedies can better be afforded by the ordinary tribunals of the country." (4 C.R.C., pp. 62 &s., and especially at page 69.)

In *Duthie vs. The Grand Trunk Railway Co.* (4 C.R.C., p. 304) late Chief Commissioner Killam reaffirmed the principle that this Board was created to enforce the provisions of the Railway Act, but not to supplant or supplement the provincial courts in the exercise of their ordinary jurisdiction; that the Board was not empowered to award damages or any other relief for any injury caused by an infraction of the Act.

In 1912 the case of the *Grand Trunk Pacific Railway Company vs. The Land Owners on Streets in Fort William*, came before the Judicial Committee of the Privy Council on an appeal from the Board's order on a question of the Board's power as regards compensation to be paid.

Under section 47 of the Railway Act then in force, the Board could direct that its orders should come into force, *inter alia*, upon the performance "of any terms which the Board may impose upon any party interested."

This language was certainly general and comprehensive, but it did not appear to their lordships that it would be safe to infer from the generality and comprehensiveness of the powers of the Board, and apart from any specific reference to the compensation itself and the parties entitled thereto, that the liability in damage could be altered, abrogated, or enlarged by the exercise of the Board's administrative powers. (1912 Appeal Cases, pp. 224 &s.) The same principle was adopted by the Board in the case of the *City of Windsor vs. The Bell Telephone Co.* (22, C.R.C. 416), and the *Bell Telephone Co. vs. the City of Ottawa* (22, C.R.C. 421).

In the first case, the Board decided that in approving the route of the Bell Telephone Company on a highway, the jurisdiction of the Board is confined to fixing such terms, conditions or limitations as refer to the lines, wires or poles within the municipality, but that the Board had no jurisdiction to require, as a condition, the payment of any money or the granting of free telephones to the municipality. In the second case above quoted, the Board decided that it was given no jurisdiction under the Railway Act to make the payment of compensation a term of an order approving the location or construction of a telephone line, or to impose any condition for which a municipality may contend in bargaining with a telephone company as a term or condition of such order.

The Board has held in *Robinson vs. C.N.R.* (11, C.R.C., p. 289) that it had no jurisdiction to award damages for improperly taking away spur track facilities; in *Rogers vs. Canadian Express* (9 C.R.C. 480), that it had no power to award damages for the negligence of express employees; in *Duthie vs. Grand Trunk* (4 C.R.C. p. 304, quoted above) that it could not award damages for infractions to the Railway Act; in *United Grain Growers vs. C.P.R.* (26 C.R.C., p. 26) wherein negligence on the part of the railway employees in wrongly routing a car was alleged, that it had no jurisdiction to deal with a claim for damages.

The Board is the guardian of the public safety; it is given administrative powers to say how crossings shall be made; it may lay down reasonable conditions as to the engineering features and protective devices to insure public safety; but the Railway Act has always been construed by this Board, by all other tribunals of this land and, forsooth, by the Judicial Committee of the Privy Council itself, as leaving the question of liability in damages to be determined by the civil laws and to be administered by the civil courts of each province.

Under section 372, it is provided that lines, wires, etc., for the conveyance of power or electricity, shall not be constructed or maintained across a railway without leave of the Board, and that the Board may grant the application and may determine the terms and conditions under which the proposed works may be executed.

The expression "terms and conditions" used here obviously refers to devices for safety, and does not extend to the right to fix liability for what may happen, even if these terms and conditions are observed.

## VI

One must also bear in mind that power companies have been created by Parliament because public necessities require the transmission and distribution of electric power, quite as much as they require railways.

When a railway company appropriates property for public purposes, the right of way to the private property of the railway company remains subject to various provisions of the law. In 18, C.R.C., p. 442, reference is made to the decision of Mr. Justice Osler, wherein all the authorities on the subject were cited, and *inter alia* the following is quoted: "After a full review of the authorities, English and American, the learned judge came to the conclusion (p. 430) that if power is granted for one public or quasi-public purpose, such as the construction of a railway, and cannot be exercised without acquiring lands already expropriated for another public purpose, and yet can be exercised consistently with the existence of the latter, and without substantial interference therewith, the right to exercise such power exists by necessary implication."

Effect is given to this principle all through the Railway Act, where railway property is permitted to be used either for railway uses or for other public purposes, like highway crossings, farm crossings and crossings of transmission and distribution wires.

The railway companies urged that the power company having brought a very dangerous thing upon its land, it is liable at common law for all damage caused by the escape of that thing, no matter how that escape is brought about. They based themselves on the old *Rylands vs. Fletcher* case, but this case has no application herein, and the doctrine of *Rylands and Fletcher* (L.R. 3 H.L. 330) was never extended to cover the act of God.

The facts were as follows: The *Rylands* were mill-owners, their plant being on a property near that under which *Fletcher* occupied and worked a mine. Desiring to construct a reservoir, F. employed admittedly competent persons to do this. In working his mine F. came upon the disused passages of a forgotten mine, and these passages were connected with the land above by certain vertical shafts imperfectly filled with marl and rubbish.

The engineer or contractor failed properly to block these shafts, and when the water was introduced into the reservoir, it broke through some of the shafts, and flooded F's mine.

In the House of Lords, Lord Cairns, in delivering judgment, adopted the language of Mr. Justice Blackburn of the court below, and it is quite evident from the very language used in this decision that the *Rylands* could have excused themselves by showing that the escape had been the consequence of "vis major" or the act of God.

*Beven on Negligence*, commenting on this at p. 474 of Vol. 1 of his third ed., after stating the general rule as laid down in *Rylands & Fletcher*, and as applied to electricity in *National Telephones & Baker*, notes that there are four exceptions to its generality, viz:—

- "(1) Where the damage to the plaintiff arises from the natural user of land.
- "(2) Where the damage to the plaintiff is caused by his own default.
- "(3) Where the damage to the plaintiff is the consequence of vis major or the act of God, and
- "(4) Where the damage is the consequence of accumulation for public purposes under the direct authority of a statute."

He goes on to cite cases in which these exceptions have been upheld; and at p. 480 cites the case of *Nichols v. Marsland* (L.R. 10 Ex. 255 & 2 Ex. Div. 1),



where the judgment was delivered by Mellish, L.J., who had been counsel in *Rylands v. Fletcher*, and where the exception there suggested is definitely adopted, i.e., that acts of God did not fall under the general rule.

Again, in *Eastern & S. African Telegraphs v. Capetown Tramways* (1902 A.C. 381) where part of the Tramways system was authorized by statute and part was not. Here the variations in current caused by the stopping and starting of the cars disrupted the cable company's service, and it was shown that such interruptions could be avoided by laying a duplicate cable for a distance out to sea. The Privy Council held, for the part operated without statutory authority, that the doctrine of *Rylands v. Fletcher* was not inconsistent with the Roman-Dutch law and would apply to an escape of electricity injuring persons or the ordinary use of someone else's property, but would not apply to the case of injury to a peculiar trade apparatus, unnecessarily so constructed. For the part of the line operated under statute, they held that the "leak" was not a leak in the meaning of the statute for which damages would have had to be paid, but was the natural consequence of a business carried on under statutory authority.

The principle of *Rylands v. Fletcher* has been refused where the escape of electricity caused damage only by reason of the trespass of a third party in the case of *Goodbody v. Poplar Borough Council* (84 L.J. K.B. 1230), where the council was operating a power system under statutory authorization and gas, escaping from a nearby main not belonging to them, entered a transformer changer and was ignited by a spark from their automatic circuit breaker, exploding and causing injury to a passerby. They were held not liable because they were not in control of the gas in question.

The law of the province of Quebec is somewhat different, though in the end it amounts to about the same thing. The pertinent article of the Civil Code is 1054 which says in part:—

"He is responsible not only for the damage caused by his own fault, but also for that caused . . . by things which he has under his care;

"The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which caused the damage."

The liability expressed here has been much debated in our courts. Until the *Doucet v. Shawinigan Carbide* case in 1910, the jurisprudence held firmly to the view that this article created a presumption of "faute," which was rebuttable. In and following that case arose a controversy over the interpretation of the article which came before the Privy Council in 1921.

In *Quebec Ry., L.H. & P. v. Vandry* (52 D.L.R. 136) the Privy Council, disregarding the previous jurisprudence, applied to the article the rule of construction laid down by Lord Herschell in *Vagliano v. The Bank of England*. Under this they found that the sense of the article was plain, and that accordingly, without recourse being had to the sources of the article, the natural meaning should be given to its words. This natural meaning they found would make the "exculpatory" paragraph apply to the first paragraph of the article, so that what was created was not a rebuttable presumption of "faute," but a liability, which might be avoided by showing that the accident could not reasonably have been prevented.

Here the power wires of the defendant were brought down by a sleet-covered branch, causing damage to the plaintiffs. Their Lordships were not so sure that this constituted an act of God, but they in any event held the defendant liable because it had failed to show that it could not reasonably have prevented the damage (by grounding its transformers).

The above case, which is difficult to read, has been very clearly explained and approved in *City of Montreal v. Watt & Scott*, 1922 (59 D.L.R. 1), which



is the latest pronouncement of the Privy Council on the point. Here an exceptional rainfall found the city's sewer on Commissioners street inadequate to carry off the volume of water, with the result that it backed up into the respondent's' cellar and caused them damage. The city was held liable on the ground that the storm had not been sufficiently intensive not to have been anticipated and so did not constitute an act of God, and the city could have prevented the damage by providing an adequate sewer or check-valves. In the words of the Court:—

“The only addition to the views expressed in Vandry's case, which was not necessary there but is necessary here, is that in their Lordship's view ‘unable to prevent the damage complained of’ (1054) means unable by reasonable means. It does not denote an absolute inability. If therefore the storm in question could be described as a *cas fortuit* or *force majeure*, and if the appellants had shewn that they had constructed the sewer of a size sufficient to meet all reasonable expectations there would, in their Lordships' view, have been a case where the exculpatory paragraph would have applied.”

In the above two cases acts of God are considered as happenings which could not have reasonably been foreseen and against which, in consequence, the keeper of the thing could not reasonably be expected to guard. Thus the interpretation placed upon the common law (whether of England or of Quebec) by the railways is too broad. The liability which the power companies bring to the edge of their right of way, and, as a matter of fact carry over it, apart from all question of statutory authorization, does not include liability for acts of God—it is a liability to take reasonably extraordinary precautions in the handling of a dangerous thing. A liability, if you will, in which the conception of negligence is broadened to a degree commensurate with the danger in question.

The Board would in no way be justified in fixing the power companies with a liability which covered every accident, arising from no matter what cause, merely on the strength of the argument that it will only be giving effect to the common law in doing so.

Power companies are authorized by statute to serve the community, to erect poles, to carry power transmission lines, and hence, by implication, to cross railways where it is necessary to do so, subject to regulation by this Board, as hereinabove set out. Such statutory authority clearly modifies the common law liability. and under *C.P.R. vs. Roy* (1902 A.C. 220) a company so authorized is accountable only for damages arising out of its own negligence. In this case the railway was sued for damage caused by sparks from their locomotive, which they proved they had run after the most improved methods and without negligence. At page 231 of the report, the Lord Chancellor laid down the following principle:—

“The law of England, equally with the law of the province in question (Quebec) affirms the maxim *sic utere tuo ut alienum non laedas*, but the previous state of the law whether in Quebec, or in France, or England, cannot render inoperative the positive enactment of a statute, and the whole case turns, not upon what was the common law of either country, but what is the true construction of plain words authorizing the doing of the very thing complained of.”

This case is obviously applicable here. It is futile to say that the power companies have no statutory authorization except under order of the Board. They carry with them their common law liability as modified by their incorporating powers (in the light of *C.P.R. v. Roy*) wherever they go. An order of the Board to cross a railway right of way under the present regulations in no way relieves them from it on that right of way, nor could an order of the Board do so.

Statutory authorization as a defence to liability is fully discussed and a complete history of the jurisprudence given in *Beven on Negligence*, Vol. 1, pp. 286-293.

The Board is here concerned in reconciling the two services both authorized to operate for the benefit of the general public within their respective spheres, both legally causing damage without any fault on their part as a necessary incidental to the exercise of powers granted to them by the supreme authority, Parliament. When there is damage arising out of the proximity of the power lines to the telegraph lines, the Board's concern is, not who shall pay for that damage, but how shall that damage be prevented. Because the damage happens to be difficult to estimate and to trace, it is not for the Board to say who is to pay for it. The power companies are empowered to come anywhere with their lines, and when the Act says they shall not come near without the permission of the Board, it again only means: without complying with the conditions of the Board as to safe construction, etc. It does not imply a power to prevent them from coming "near."

The American case of *Postal Telegraph Cable Co. v. Pacific Gas & Electric Co.*, cited by Mr. Lucas at p. 2285 of the 1925 record, gives a good example of how they deal with the question of parallelism in the United States.

I adopt the reasoning of late Chief Commissioner Killam in *C.P.R. and C.N.R. vs. Kaministiquia Power Co.* (6 C.R.C. p. 160 and particularly at p. 170) where he used the following language: "The railway companies have since asked for the insertion of a condition throwing upon the power company the responsibility for any damage that may occur to the railway companies or those using the railways. I do not think that such a condition should be enforced between the railway companies and the power company. I think it best that we should simply refuse the applications of the railway companies, leaving the municipality and the public using the highways to such protection as is given by the provincial law."

In my opinion, clause 2 of the "Conditions and Specifications" hereinabove referred to should remain as it is.

## VII

I agree with my learned Chief Commissioner as regards clauses 3 and 10. General Order No. 231 should be amended by striking out clause 3 as it now stands and inserting in lieu thereof the following:—

"3. That any order of the Board granting leave to erect, place or maintain any line or lines, wire or wires, cable or cables, along or across any railway subject to the jurisdiction of the Board, shall, unless otherwise expressed, be deemed to be an order for leave to erect, place and maintain the same according to the conditions and specifications set out in that part of the said schedule applicable thereto, or as the same may be changed, varied or added to by future order of the Board which conditions and specifications with such change, variations and additions as may be ordered by the Board, shall be considered as embodied in any such order without specific reference thereto."

A clause to be numbered 10 should be added to the conditions and specifications as now framed, to read as follows:—

"10. The applicant shall as soon as possible and immediately after its head office has received information of the occurrence upon railway lands, along or across which its wires are constructed and maintained, of any accident connected with the works of the applicant attended with personal injury to any person using the railway, or to any employee of the railway company, or which causes loss or damage to the railway company, give notice thereof by telegraph with full particulars to the Board."



## ORDER No. 46323

*In the matter of the application of H. G. Toll, Agent, Transcontinental Freight Bureau, Chicago, Illinois, for permission to file, on less than statutory notice, supplements to Transcontinental tariffs increasing international rates on grain, grain products, and seeds.*

File No. 27612.53

MONDAY, the 23rd day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*

Upon its appearing that the order of the Interstate Commerce Commission in Docket 17,000 (Part 7), Rate Structure Investigation, grain and grain products within western district and for export, dated July 1, 1930 (as amended), requires readjustment of rates on those commodities, effective April 1, 1931, and, conformably therewith, changes in rates are also necessary from points in Canada to points in the United States, from points in the United States to points in Canada, and between points in the United States through Canada,—

*The Board orders:* That H. G. Toll, Agent of the Transcontinental Freight Bureau, acting under powers of attorney, be, and he is hereby, permitted to file, upon twenty days' notice, effective April 1, 1931, supplements to his tariffs C.R.C. Nos. 563, 566, 571, 572, and 573, increasing rates on grain, grain products, and seeds; and that Order No. 45892, dated December 5, 1930, made herein, be rescinded.

H. A. McKEOWN,

*Chief Commissioner.*

## ORDER No. 46341

*In the matter of the application of the Quebec Railway, Light & Power Company, hereinafter called the "Applicant Company," under Section 333 of the Railway Act, for approval of its Standard Passenger Tariffs, C.R.C. Nos. 67 and 68, on file with the Board under file No. 36984.*

WEDNESDAY, the 25th day of February, A.D. 1931.

Hon. H. A. McKEOWN, K.C., *Chief Commissioner.*S. J. McLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said Standard Passenger Tariffs of the applicant company, C.R.C. Nos. 67 and 68, on file with the Board under file No. 36984, be, and they are hereby, approved; the said tariffs, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. A. McKEOWN,

*Chief Commissioner.*



## ORDER No. 46353

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for authority to carry traffic over the Unity Southwesterly Branch from the junction of the said Branch with the Unity Subdivision of the Grand Trunk Pacific Railway Company, southwesterly to a point in the vicinity of Salvador, Saskatchewan, a distance of 27·0 miles; also to carry traffic over the west leg of wye at the said junction, 0·29 of a mile in length.*

File No. 36637.18

THURSDAY, the 26th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to carry traffic over the Unity Southwesterly Branch from the junction of the said branch with the Unity Subdivision of the Grand Trunk Pacific Railway Company southwesterly to a point in the vicinity of Salvador, Saskatchewan, a distance of 27·0 miles; also over the west leg of wye at the said junction 0·29 of a mile in length: Provided that the operation of trains over the said line be limited to a speed not exceeding twelve miles an hour.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 46350

*In the matter of the application of the Algoma Central and Hudson Bay Railway Company, hereinafter called the "Applicant Company," under Section 323 of the Railway Act, for approval of by-law, dated 19th February, 1931, authorizing J. P. Mader, Traffic Manager of the Applicant Company, to prepare and issue tariffs of the tolls to be charged for all traffic carried by the Applicant Company upon its railway, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid.*

File No. 37784

FRIDAY, the 27th day of February, A.D. 1931.

S. J. McLEAN, *Asst. Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

*It is ordered:* That the said by-law of the applicant company, dated February 19, 1931, on file with the Board under file No. 37784, be, and it is hereby, approved.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 46359

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

FRIDAY, the 27th day of February, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 5 to Tariff C.R.C. No. E-1227, and Supplement No. 40 to Tariff C.R.C. No. E-1235, also in Tariff C.R.C. No. E-1702, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 46365

*In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for leave to carry traffic over its Unity Southwesterly Branch from a point at mileage 27.0 to mileage 52.0.*

File No. 36637.18

TUESDAY, the 3rd day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*Hon. T. C. NORRIS, *Commissioner.*J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

*The Board orders:* That the applicant company be, and it is hereby, authorized to carry traffic over its Unity Southwesterly Branch from a point at mileage 27.0 to mileage 52.0: Provided the operation of trains over the said line be limited to a rate of speed not exceeding twelve miles an hour.

S. J. McLEAN,

*Assistant Chief Commissioner.*

## ORDER No. 46369

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.13

TUESDAY, the 3rd day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*J. A. STONEMAN, *Commissioner.**The Board orders:*

1. That the toll published in item 1 of Supplement No. 13 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company, under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 1 of Supplement No. 13 to Tariff C.R.C. No. 811, approved herein, is 8 cents per 100 pounds.

S. J. McLEAN,  
*Assistant Chief Commissioner*

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ORDER No. 46370

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

TUESDAY, the 3rd day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 1 to Tariff C.R.C. No. E-1689, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of section 3 of the said Act.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 46376

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

THURSDAY, the 5th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 20 to Tariff C.R.C. No. E-1230 and in Supplement No. 42 to Tariff C.R.C. No. E-1237, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,  
*Assistant Chief Commissioner.*

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ORDER No. 46378

*In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.*

File No. 34822.2

THURSDAY, the 5th day of March, A.D. 1931.

S. J. McLEAN, *Assistant Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

*The Board orders:* That the tolls published in Supplement No. 6 to Tariff C.R.C. No. E-1242, in Supplement No. 23 to Tariff C.R.C. No. E-1243, and Supplement No. 1 to Tariff C.R.C. No. E-1671, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 2 of the said section 3.

S. J. McLEAN,  
*Assistant Chief Commissioner.*













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